

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown &

14 Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22

23 DEPOSITION OF CHRISTOPHER J. PROCTOR

24 Volume II, Pages 310 - 552

25

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1 (The following is the continued deposition  
2 of CHRISTOPHER J. PROCTOR, taken pursuant to Notice  
3 of Taking Deposition by Rule 30.02(f), by videotape,  
4 at the offices of Simpson Thacher & Bartlett,  
5 Attorneys at Law, 425 Lexington Avenue, New York, New  
6 York, on August 13, 1997, commencing at approximately  
7 8:35 o'clock a.m.)

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## 1 I N D E X

2	EXHIBITS	DESCRIPTION	PAGE MARKED
3	Proctor 600	19th August 1977 letter,	
4		Green to Sheehy, Bates	
5		110069816-9	327
6	601	Meeting of Scientific	
7		Commission of ASFC at	
8		Fribourg, 31st January 1964,	
9		Bates 100153049-55	351
10	603	23.4.1979 Cigarette Smoking,	
11		Health, and Dissonance,	
12		(Project LIBRA), Report No.	
13		RD.1670, Bates 105562110-39,	
14		41-44, 46, 48, 50-51, 53,	
15		55-57, 59-67, 69, 72-74, 76,	
16		78, 80, 82, 84, 86, 88-89	393
17	604	Proceedings of the Smoking	
18		Behaviour - Marketing	
19		Conference, 9th-12th July	
20		1984, Bates 536000000-90	403
21	605	13th January 1976 letter,	
22		Thornton to Ayres, Bates	
23		105392319-31	414
24			
25			

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1	606	R&D Views on Potential	
2		Marketing Opportunities,	
3		Bates 109869437-40	418
4	607	19.6.1974 Patents Act	
5		1949-1961, Patents Form	
6		No. 3, Complete	
7		Specification, Bates	
8		107605012-9	428
9	608	Human Smoking Behaviour,	
10		Bates 102226308-17	432
11	609	The Foundation for Product	
12		Innovation in Consumer	
13		Motivation, Bates	
14		401854052-5	434
15	610	Tobacco Research Council	
16		Laboratories, Harrogate,	
17		Progress Report, October	
18		1967, Bates 105396874-91	441
19	611	25th November 1977 letter,	
20		Oldman to Green, Bates	
21		105392223-42, 109883023-6,	
22		105392359, 109869437-40	466
23	612	29th January 1982	
24		correspondence, Oldman to	
25		Blackman, Bates 105399614-20	485

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1	613	12 November 1984 Project	
2		SHIP, Review of Progress -	
3		5/6 November 1984, Bates	
4		100543649-59	502
5	614	1.5.1964 The Release During	
6		Smoking of Nicotine Added as	
7		Various "Salts" to Extracted	
8		Tobacco Cigarettes, Bates	
9		400722326-43	506
10	615	20.10.1976 Project Fleece -	
11		An Examination of R.J.	
12		Reynolds' Brands, Bates	
13		105652609-50	508
14	616	October 26, 1992 PM's Global	
15		Strategy: Marlboro Product	
16		Technology, Bates	
17		BW-SD3-0000059-294	514
18	617	Executive Summary, Ammonia	
19		Technology, Bates	
20		401155909-25	518
21	618	1962 Advertisement, Bates	
22		660028916	533
23	619	August 1962 Smoking by	
24		Children and Adolescents,	
25		Bates 105408812-5	536

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1           620    The Current Group R&D  
2                    Projects, Bates  
3                    109870521-61                   545  
4  
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1 P R O C E E D I N G S

2 (Witness previously sworn.)

3 CHRISTOPHER J. PROCTOR

4 called as a witness, being previously

5 sworn, was examined and testified

6 as follows:

7 ADVERSE EXAMINATION (cont'd)

8 BY MS. WIVELL:

9 Q. Sir, you understand you're still under oath?

10 A. Yes, I do.

11 Q. All right. Now, sir, isn't it true that as  
12 early as 1958 many people associated with the tobacco  
13 industry believed smoking caused lung cancer?

14 A. I'm not sure what you mean by associated with  
15 the -- the -- the tobacco companies. Could you  
16 explain a little bit further. I'll try and answer.

17 MS. WIVELL: Well, Mr. LaBorde, could you  
18 hand the witness Exhibit 304, please.

19 (Plaintiffs' Exhibit 304 was handed  
20 to the witness.)

21 THE WITNESS: Thanks.

22 BY MS. WIVELL:

23 Q. Showing you what's previously been marked as  
24 Exhibit 304, this is a -- a document Bates numbered  
25 105408490; right?

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- 1 A. That's correct.
- 2 Q. And it's a report on a visit to the USA and
- 3 Canada that occurred in May -- April and May of 1958;
- 4 right?
- 5 A. Yeah, from the 17th of April to the 12th of May
- 6 1958.
- 7 Q. And one of the people who participated in that
- 8 visit was D. G. I. Felton; right?
- 9 A. Yep, that's one of the three.
- 10 Q. And Mr. Felton was an employee of BATCO, wasn't
- 11 he?
- 12 A. I believe so. I don't know whether he was at
- 13 that time, but, I mean, I guess that may be true.
- 14 Q. Now if you look at the second page of the
- 15 document, you see an itinerary for that visit;
- 16 correct?
- 17 A. Yes, it's marked "ITINERARY."
- 18 Q. And the people visited folks -- I'm sorry.
- 19 Mr. Felton and his colleagues visited folks from
- 20 American Tobacco Company; right?
- 21 A. Yeah, the itinerary lists American Tobacco
- 22 Company; the Medical College of Virginia; Duke
- 23 University; Liggett & Myers; Philip Morris; A. D.
- 24 Little; the TIRC in New York; Roswell Park Memorial
- 25 Institute in Buffalo; Yale University; the Biological

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1 Research Institute in Cambridge; Roscoe Jackson  
2 Laboratory at Bar Harbor, I think it says; the  
3 Industrial Technical Committee of TIRC in Richmond;  
4 the National Cancer Institute in Bethesda; Johns  
5 Hopkins Hospital in Baltimore; New York University;  
6 TIRC; Sloan-Kettering Institute; again TIRC; and then  
7 Montreal is the last part of the itinerary.

8 Q. Now the second-to-the-last entry refers to the  
9 TIRC in New York, and then under the individuals who  
10 were -- who they met with, it lists the Scientific  
11 Advisory Board of the TIRC; right?

12 A. That's what's noted here in the itinerary,  
13 yeah.

14 Q. Now, sir, you understand that the TIRC was the  
15 organization which was the forerunner of the Tobacco  
16 Research Institute; right?

17 MR. SHEFFLER: Objection to form.

18 A. I -- I mean, I think it's the forerunner of The  
19 Council for Tobacco Research, CTR.

20 Q. Fair enough. Let me restate my question.

21 And you understand that TIRC was the forerunner  
22 of The Council for Tobacco Research; right?

23 A. Yeah, I gather that the TIRC developed later  
24 into The Council for Tobacco Research.

25 Q. Now, sir, if we turn to the next page of the

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1 document, do you see the heading, quote,

2 "'CAUSATION,'" quote, "OF LUNG CANCER"?

3 A. Yes, halfway down on what is page two, it says

4 "'CAUSATION'" in inverted commas or quotation marks

5 "OF LUNG CANCER."

6 Q. And it goes on to say "With one exception

7 (H.S.N. Greene) the individuals whom we met believed

8 that smoking causes lung cancer if by," quote,

9 "'causation,'" quote, "we mean any chain of events

10 which leads finally to lung cancer and which involves

11 smoking as an indispensable link"; correct?

12 A. That's correct. That's what it says.

13 Q. All right. Now, sir, isn't it a fact that in

14 the last decade BATCO has considered changing its

15 policy with regard to causation on the issues of lung

16 cancer, emphysema, respiratory and coronary disease?

17 MR. FRANKEL: Object to form.

18 A. I'm not quite sure what you mean by "policy."

19 If the question is has British-American Tobacco

20 Company Limited changed in the last decade its views

21 in regard to the science related to smoking and

22 health, the answer is no.

23 Q. All right. Let me rephrase the question to meet

24 counsel's objection.

25 Isn't it a fact that within the last decade

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1 BATCO has considered changing its policy with regard  
2 to the issue of causation and smoking and disease?

3 MR. SHEFFLER: Objection. The question was  
4 asked and answered.

5 A. I don't -- again I'm not quite sure what you  
6 mean by "considered." The fact is that certainly, as  
7 far as I'm aware, right through the last dec --  
8 decade and before that British-American Tobacco  
9 Company's views on smoking and health have been based  
10 on -- on the scientific literature and are very much  
11 based, as -- as I guess we see from this document,  
12 in -- with discussions and in collaborations with --  
13 with governments.

14 Q. Sir, would you turn to or --

15 MS. WIVELL: Mr. LaBorde, could you show  
16 the witness Exhibit 502.

17 (Plaintiffs' Exhibit 502 was handed  
18 to the witness.)

19 BY MS. WIVELL:

20 Q. Sir, showing you what's previously been marked  
21 as Exhibit 502, this is a document that is headed  
22 "SECRET, APPRECIATION"; correct?

23 A. It has a -- a title top left saying "SECRET"  
24 underlined, then "APPRECIATION" in the center, yeah.

25 Q. All right. Would you turn to the last page of

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1 the document, Appendix A3.

2 A. Appendix A3. Sorry, what Bates number is that?

3 Q. The last page of Exhibit 502.

4 A. Oh, I'm sorry.

5 MR. SHEFFLER: Is there -- excuse me,  
6 Counsel. Since you don't have an extra copy, could I  
7 just see who wrote the document myself.

8 A. Yeah, okay. Yeah, I see Appendix A3.

9 Q. Now at the top of the page it says "DRAFT  
10 NUMBER 3, STRICTLY PRIVATE AND CONFIDENTIAL, A New  
11 Company Approach to ... Smoking and Health Issue";  
12 correct?

13 A. That's correct.

14 Q. And it goes on to say "Causation. We now accept  
15 that smoking of tobacco products, combined with other  
16 factors such as genetic pre-disposition, air  
17 pollution and psychological temperament is dangerous  
18 to the health of a small minority of smokers and can  
19 be a cause of lung cancer, emphysema and other  
20 respiratory and coronary diseases, many of which are  
21 fatal." Did I read that correctly, sir?

22 A. You read that correctly from this document that  
23 I gather was written by someone in public affairs and  
24 certainly, I mean, circulated within public affairs  
25 people.

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1 Q. All right. Did BATCO ever adopt the position on  
2 causation that is listed here as point number one?

3 A. I mean, I -- I'll try and restate again what  
4 British-American Tobacco's position is and has been  
5 for some time on -- on smoking and health in relation  
6 to causation. We believe, for example, with lung  
7 cancer that smoking is an important risk factor for  
8 lung cancer. We -- we recognize and respect what  
9 public health authorities have -- have made their  
10 judgments in terms of that statistical data; they  
11 believe that smoking is a cause of lung cancer.

12 Our belief, as is -- is evidenced by the  
13 significant amount of research that we continue to do  
14 in terms of identifying biological mechanisms in  
15 relation to lung cancer, is that there is still work  
16 to -- to do, but clearly smoking is an important risk  
17 factor.

18 Q. And it would be fair to say, wouldn't it, that  
19 none of the B.A.T. Group companies have ever told the  
20 public that they now accept that smoking could be a  
21 cause of lung cancer, emphysema, respiratory and  
22 coronary diseases as is stated here?

23 MR. SHEFFLER: Object to the form.

24 A. I mean, as is precisely stated here, perhaps  
25 not, but certainly the -- the -- the view that we

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1 would always give in response to that question,  
2 that -- is that smoking is an important risk factor  
3 for lung cancer and that we respect what public  
4 health authorities have said in terms of making their  
5 judgments on this issue. And it's very clear in  
6 terms of what the public understand, is that they  
7 receive their information from public health  
8 authorities, and we have done nothing, as -- as far  
9 as I can see reviewing our behavior over -- over many  
10 decades, to -- to try and deny what -- what -- access  
11 of the public to the public health authorities'  
12 view.

13 Q. Well, sir, let me ask you this: Would you agree  
14 that lung cancer can be fatal?

15 A. For someone who contracts lung cancer, yes,  
16 it --

17 Q. You --

18 A. -- could be a cause of death.

19 Q. You understand emphysema can be fatal?

20 A. Again yes.

21 Q. You understand coronary diseases can be fatal?

22 A. Again yes.

23 Q. And isn't it a fact that BATCO has actually  
24 calculated the number of deaths per year that can be  
25 attributed to these -- to smoking as a result of



1 these various diseases?

2 MR. SHEFFLER: Object to the form. Smoking  
3 doesn't -- I think you need to restate that  
4 question. As it's stated, it's smoking as a result  
5 of various diseases, and I don't think --

6 MS. WIVELL: All right, I'll rephrase the  
7 question.

8 Q. Isn't it a fact that BATCO has actually  
9 calculated the number of deaths per year that can be  
10 attributed to smoking cigarettes?

11 MR. SHEFFLER: Object to the form.

12 A. I mean, there are a lot of calculations in the  
13 scientific literature to try and extrapolate from the  
14 statistical studies, and I've told you that we accept  
15 what statistical studies say to try and come up  
16 with -- with mortality rates in various countries.  
17 We have certainly looked at those types of equations  
18 and the -- the types of assumptions that have to be  
19 built into those equations to come up with -- with  
20 mortality rates, but that's, I mean, a common  
21 practice in the scientific literature.

22 Q. Well, sir, apart from the scientific literature,  
23 isn't it a fact that the chair of B.A.T. Industries  
24 asked Dr. Green of BATCO to calculate the number of  
25 deaths which could be determined each year to have

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1 been caused by smoking?

2 MR. SHEFFLER: Ob -- object to the form.

3 If you have a specific reference that you're trying  
4 to get the witness to pull out of the air, why don't  
5 you show it to him; then ask the questions.

6 A. My response is maybe yes, but, I mean, if you  
7 show me the document, I'll try and respond to it and  
8 help you.

9 (Plaintiffs' Exhibit 600 was marked  
10 for identification.)

11 THE WITNESS: Thanks.

12 BY MS. WIVELL:

13 Q. Sir, showing you what's been marked as  
14 Plaintiffs' Exhibit 600, this is a document that  
15 begins with Bates number 110069816; correct?

16 A. That's correct.

17 Q. And it is a note to Patrick Sheehy from S. J.  
18 Green; correct?

19 A. Yeah, it's a note to Mr. P. Sheehy and dated  
20 19th of August 1977 from S. J. -- well it says  
21 "Enclosure: S.J. GREEN," but I assume it's from  
22 S. J. Green.

23 Q. All right. And it --

24 According to the first page of the document,  
25 Mr. Sheehy had -- at the CAC.II had asked Green to

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1 explore an improved Herzfeld index; correct?

2 A. Yeah. I mean, what it says here, "At CAC.II you  
3 asked me to explore an improved Herzfeld index. This  
4 is merely an example of what such an index would  
5 involve and the sort of assumptions which must  
6 necessarily be made or implied. I think it  
7 demonstrates clearly that it is not a path we should  
8 encourage anyone to follow at present. But  
9 undoubtedly we should try this exercise from time to  
10 time. As more information comes in someone else  
11 surely will."

12 And what I -- I assume is meant by that is that  
13 to make calculation -- I mean, the Herzfeld -- feld  
14 index was -- was a matter of -- of -- of discussion  
15 in the -- in the scientific arena, talking about was  
16 it possible to identify a variety of different  
17 substances in tobacco smoke that you could combine  
18 together to give some index that might have some  
19 relevance to human health.

20 I think what you'll find, for example, in the --  
21 the work British-American Tobacco has done in  
22 conjunction with -- with the British government is  
23 that, I mean, what they have decided is that  
24 something like the Herzfeld index wasn't appropriate  
25 and what they have pushed towards is a -- is a

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1 product modification program, which has -- has  
2 resulted in low tar or changes in tar-to-nicotine  
3 ratios.

4 Q. Move to strike the nonresponsive portions of the  
5 answer.

6 Sir, if we turn to the next page of the  
7 document, in the middle of the page there is a cal --  
8 there is a calculation, isn't there?

9 A. There's not a calculation. There's a formula in  
10 the middle which says "The Index," which I assume it  
11 refers to the Herzfeld index, was -- which was from  
12 this scientist called Herzfeld.

13 Q. All right. And if you look down below on that  
14 page, you see a definition of each of the various  
15 things that are incorporated into that formula;  
16 right?

17 A. What he does is define the various terms that  
18 help -- Herzfeld uses in this equation to try and  
19 come up with an index, yes.

20 Q. Well, actually Green did this equation, didn't  
21 he, sir?

22 A. I don't know from this document, but if we're  
23 talking about the Herzfeld index, that's something  
24 that was commonly known in the scientific literature,  
25 and it struck me from the note on the front of the

1 page that what he was looking at is exploring what  
2 may be an improved index. So I don't know whether --  
3 I would assume whether or not this is Green specific,  
4 it would certainly relate to the Herzfeld  
5 assumptions.

6 Q. Well he signed it at the end of the document,  
7 didn't he, sir?

8 MR. SHEFFLER: Objection. That has --  
9 objection.

10 A. I mean, there's a sig -- signature at the end of  
11 the document which, as far as I can tell, says "S. J.  
12 Green," but, I mean, that doesn't tell me whether  
13 he's -- he's copied this equation directly from --  
14 from Herzfeld. It's titled "The Index," which I  
15 would assume means -- "The Index" refers to the  
16 Herzfeld index.

17 MR. SHEFFLER: Let the record reflect that  
18 the -- the word "Index," "The" is in -- "Index" --  
19 "Index" is capitalized.

20 Q. Sir, if we look down at the bottom of the page,  
21 the bottom of the second page, we see what, for  
22 example, "L" means in the calculation found in the  
23 center of the page; right?

24 A. Yeah. What the bottom of the page denotes is --  
25 is what the various letters are in this Herzfeld

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1 formula --

2 Q. And --

3 A. -- and what they refer to in terms of making

4 assumptions and applying it to a particular equation,

5 yeah.

6 Q. And "L" is the average loss of life expectancy

7 due to diseases; correct?

8 A. Capital "L" is -- is certainly -- is stated as

9 "is average loss of life expectancy due to

10 diseases," yeah.

11 Q. Small "l" is for lung cancer?

12 A. It says small "l" is for lung cancer. "h" is

13 for cardiovascular, in brackets "(CHD)," which

14 presumably is coronary heart disease. "e" is for

15 bronchitis, and "i" and "j" are for others, which I

16 think denote as parts of -- of Herzfeld's equation

17 various endpoints in terms of diseases he was trying

18 to calculate in this whole index.

19 Q. Well Herzfeld didn't calculate disease, did he?

20 He calculated numbers for various cigarettes that

21 were put into an index and published; right?

22 A. What the Herzfeld index was all about was trying

23 to identify whether it was possible to -- to

24 calculate or to make assumptions so that you could

25 come up with a -- a particular formula whereby you

1 could identify various things in tobacco smoke. For  
2 example, the line one talks about tar. In line two  
3 we talk about carbon monoxide and nitrogen dioxide, I  
4 think it is. In line three it says "TOXX" and  
5 "TOXY," which presumably means various other  
6 substances which may be identified within tobacco  
7 smoke.

8 And the notion of the index was is it possible  
9 in some manner to identify through what is known  
10 of -- of the level of particular substances in -- in  
11 any cigarette whether that could be related to  
12 disease incidence. In fact, what has happened and  
13 certainly what the United States Surgeon General has  
14 said and the British government through the  
15 Independent Scientific Committee on Smoking and  
16 Health has said that no, you can't simply do that;  
17 it's not possible to identify any particular  
18 substance or group of substances in tobacco smoke  
19 that -- that can be directly related to mortality.

20 And the -- for example, the -- I guess both the  
21 U.S. government and the British government have said,  
22 "Well, the way to go here is to make the assumption  
23 that tar contains many of these substances, and we  
24 should go on a product modification program which  
25 reduces tar."

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1 Q. Now "C" --

2 MR. SHEFFLER: Let the record reflect that  
3 when the witness referred to line one, line two and  
4 line three in his answer, he was reading from the  
5 Herzfeld formula index as reflected in Exhibit 5 --

6 THE WITNESS: 600.

7 MR. SHEFFLER: -- Exhibit 600, page two.

8 Q. Now, sir, according to the second page of the  
9 exhibit, "C" is the proportion of deaths caused by  
10 smoking; correct?

11 A. Again yes, that is one part of the equation that  
12 Herzfeld was putting in to try and calculate this --  
13 this index.

14 Q. Well this is --

15 Just so we're clear, this is Green's  
16 calculation, isn't it, sir?

17 MR. SHEFFLER: Objection. You asked him  
18 for the index definition. That was Herzfeld's.  
19 That's -- that's -- when you refer to the entire  
20 document --

21 MS. WIVELL: Counsel, that's not right, so  
22 I would appreciate it if you would just be quiet --

23 MR. SHEFFLER: Okay.

24 MS. WIVELL: -- and object if you have --

25 MR. SHEFFLER: My objection is --

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1 MS. WIVELL: -- an objection.

2 MR. SHEFFLER: My objection is that counsel  
3 for plaintiffs is deliberately trying to mislead the  
4 jury when she refers to "this" as the document when  
5 the testimony was about this formula of Herzfeld.  
6 That's my objection.

7 A. To try and answer your question in terms of --  
8 of what "C" means in -- in -- in this index, I  
9 think, I mean, on page whatever it is of the  
10 document -- it's not numbered, but it's the Bates  
11 number which ends up with 817, that what I would  
12 assume is the Herzfeld index because it says "The"  
13 and then in capitalized "I" for in front of "Index,"  
14 that "C" is one part of the equation that Herzfeld  
15 came up with which would add in there the proportion  
16 of deaths caused by smoking in terms of trying to  
17 identify whether there was a possibility of coming up  
18 with -- with some equation which related to various  
19 constituents of tobacco smoke.

20 The fact is that, I mean, this is something  
21 that -- that Herzfeld proposed in the scientific  
22 community and -- and that it never was adopted,  
23 and -- and -- and the reason for that is that you  
24 couldn't identify any particular substance within  
25 tobacco smoke that was directly related to disease.

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1 That's -- that's quite understandable since we're  
2 still seeking the biological mechanism relating to,  
3 for example, lung cancer. And what has happened is  
4 instead people have taken the approach that tar may  
5 contain many of these substances, and therefore what  
6 has been required to be listed in public has been the  
7 tar levels and the tar yields.

8 Q. Move to strike as nonresponsive.

9 Sir, if you turn to the last page of the  
10 document, there are estimates of the total number of  
11 deaths for various cigarettes with different weights  
12 of tar, nicotine, carbon monoxide and NOx there;  
13 correct?

14 A. I mean, I haven't had a chance to read this  
15 fully, but what it says, "Consider three  
16 cigarettes:" One, tar 10 milligrams, nicotine 1  
17 milligram, carbon monoxide 2 milligrams and -- and  
18 NOx 0.1 milligrams; and then it goes on to consider  
19 B, which is 20 milligrams tar, 3 milligrams nicotine,  
20 4 milligrams carbon monoxide, 0.1 milligrams NOx; and  
21 then C is tar 5 milligrams, nicotine 0.8 milligrams,  
22 carbon monoxide 1.2 milligrams and NOx 1 -- 0.1  
23 milligrams.

24 Q. And then it goes on at the bottom, toward the  
25 bottom of the page, to list the number of deaths per

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1 year that one could expect under that scenario;  
2 right?

3 MR. SHEFFLER: If -- I object. If -- if  
4 counsel is going to read --

5 MS. WIVELL: Well I object that you are --

6 MR. SHEFFLER: Excuse me.

7 MS. WIVELL: -- violating the court's  
8 order.

9 MR. SHEFFLER: I'm not violating the  
10 court's order. I'm making a request of the court at  
11 this point.

12 If counsel is going to read from the last page  
13 of this document, I would request the court and  
14 counsel to read into the record the paragraph that  
15 begins with "The writer," because that puts into  
16 context the entire rest of the assumptions based upon  
17 those numbers, and it would be misleading to the jury  
18 if that wasn't read to the -- to the jury at this  
19 time. And I make that request of counsel for  
20 completeness sake, and I think I'm entitled to have  
21 that read into the record at this point.

22 A. And what this -- this document says -- and I  
23 haven't had a full chance to read everything, but, I  
24 mean, there is -- for example, it says "Index,"  
25 with -- again with a capital "I," and then gives a

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1 variety of calculations for Case I and Case II for  
2 the various cigarettes.

3       What it also says slightly further up the -- the  
4 page is "The writer" -- and I assume that means  
5 Dr. Green -- "does not consider it reasonable to make  
6 all these assumptions and would argue that some are  
7 not even plausible." And -- and right after where  
8 these calculations are made it says "It can readily  
9 be seen that equally plausible assumptions could be  
10 made to change the ranking of cigarettes almost at  
11 will. It may be concluded that there is insufficient  
12 knowledge at present to enable any useful combination  
13 of smoke constituents to be made into a single  
14 index."

15       And I think the view that Dr. Green expressed  
16 there of his review of what Herzfeld had proposed is  
17 entirely consistent with the view that the British  
18 government took and -- and I assume the U.S. public  
19 health authorities in terms of it was not possible to  
20 identify a particular index and in this case the  
21 Herzfeld index to make these sorts of calculations,  
22 and rather people had to rely upon assumptions  
23 that -- that tar was the focus.

24 Q.   Move to strike as nonresponsive.

25       Sir, my question is simply this: Toward the

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1 bottom of the last page of this document, Dr. Green  
2 listed the number of deaths per year that one might  
3 expect if you applied the very assumptions --  
4 assumptions he made in doing the calculations for  
5 this index; isn't that true?

6 MR. SHEFFLER: Objection. Let me state my  
7 grounds for the objection. Objection because of lack  
8 of foundation, and I would again request, the same as  
9 I did before, that the entire assumptions be read  
10 into the record.

11 A. In response to your question, again there is at  
12 the bottom of this document something which says  
13 "Case I" and "Case II," and -- and for Case I it  
14 says "Assumptions as above," and I've -- and I've  
15 already said in a previous answer that what it says  
16 is "The writer does not consider it reasonable to  
17 make all of these assumptions ...." And then  
18 Case II, which "Assume smoking causes," an  
19 assumption, "25 percent of heart disease," and it  
20 goes on to say after the numbers presented there "It  
21 can readily be seen that equally plausible  
22 assumptions could be made to change the ranking of  
23 cigarettes almost at will. It may be concluded that  
24 there is" sufficient -- "insufficient knowledge at  
25 present to enable any useful combination of smoke

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1 constituents to be made into a single index."

2       And again, I mean, I think with -- this is the  
3 views of Dr. Green; that is entirely consistent  
4 with -- with what the views of the general scientific  
5 community have been on such an index.

6 Q.   Move to strike as nonresponsive.   Sir, it would  
7 be just so much easier, because I get to the issues  
8 you want to raise, if you just answer the question.  
9 Let me begin again.

10       Sir, toward the bottom of the page, the last  
11 page of this exhibit, there are listed the hundreds  
12 of thousands of deaths that could be expected if the  
13 assumptions that Dr. Green had made were valid;  
14 right?

15       MR. SHEFFLER:   Objection.   Where in --  
16 objection, lack of foundation, assumes facts not in  
17 evidence, misconstrues the document.

18 A.   It is my understanding of what I've seen from  
19 the document you presented to me -- and I said I  
20 haven't had the opportunity to read it all -- is that  
21 all that Dr. Green is doing in this case is reviewing  
22 a -- an equation proposed by -- by Dr. Herzfeld, and  
23 what he has done there on the basis of -- of what was  
24 proposed, plug in numbers from the scientific  
25 literature to see what the numbers come up with in

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1 terms of various different types of cigarette as --  
2 as -- as an assumption. But he does go on to say  
3 that "It may be concluded that there is insufficient  
4 knowledge at present to enable any useful combination  
5 of smoke constituents to be made into a single  
6 index."

7       So whatever the numbers are, sure, he has  
8 clearly done a calculation, but it also is made very  
9 clear at the end of this document that he doesn't  
10 believe there's any really substantive foundation for  
11 coming up with those numbers.

12 Q. And he also, according to the note that he sent  
13 to Mr. Sheehy, did not think that that was a path  
14 that -- that BATCO should encourage anyone to follow;  
15 right?

16 A. It says at -- on the first page "I think it  
17 demonstrates clearly that" this "is not a path we  
18 should encourage anyone to follow at present." I  
19 think the reason that perhaps he said that is that at  
20 the end of his -- his letter he concludes that -- or  
21 he says "It may be concluded that there is  
22 insufficient knowledge at present to enable any  
23 useful combination of smoke constituents to be made  
24 into a single index."

25       I'm not at all surprised that he wouldn't

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1 encourage the use of -- of this type of work since it  
2 didn't seem to be there was fundamental scientific  
3 information to make the assumptions that are required  
4 in -- in such an index to have any validity.

5 Q. Well, sir, isn't it a fact that the reason he  
6 didn't think it was a path to be followed is because  
7 it was a very dangerous fact and if the public got  
8 ahold of it there might be a diminution in the amount  
9 of smoking?

10 MR. SHEFFLER: Objection to the form of the  
11 question. It's compound. Objection to the form of  
12 the question, assumes facts not in evidence.

13 MS. WIVELL: Well let me rephrase the  
14 question.

15 MR. SHEFFLER: Objection to the form of the  
16 question, mischaracterizes the testimony of the  
17 witness.

18 Q. Isn't it a fact that the reason he didn't think  
19 it was a path to be followed is because if the public  
20 got ahold of the information there might be a  
21 diminution in the amount of smoking?

22 MR. SHEFFLER: Objection to the form of the  
23 question, misstates the -- the witness's testimony --  
24 mischaracterizes the witness's testimony. Objection  
25 to the form of the question as it lacks foundation.



1 A. I mean, it's my understanding of what's written  
2 here, I mean, clearly in terms of what Dr. Green says  
3 very specifically in this document, "... that there  
4 is insufficient knowledge at present to enable any  
5 useful combination of smoke constituents to be made  
6 into a single index," and the reason he would say  
7 this is not a useful path to follow at present is  
8 because the science wasn't there to -- to give any  
9 validity to this type of approach.

10 Q. Well, sir, you've left out the first sentence of  
11 that last paragraph in your many references to it.  
12 Doesn't it say "It can readily be seen that equally  
13 plausible assumptions could be made to change the  
14 ranking of cigarettes almost at will"?

15 MR. SHEFFLER: Objection to the -- to the  
16 form of the question and counsel's statements because  
17 that was read by the witness into the record  
18 previously. It mischaracterizes testimony.

19 A. And I apologize I wasn't reading the whole  
20 thing. I was doing that simply to try and speed up  
21 the proceedings, but, I mean, you're absolutely  
22 correct. It says "It can readily be seen that  
23 equally plausible assumptions could be made to change  
24 the ranking of cigarettes almost at will," and -- and  
25 I think that is probably one of the reasons why the

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1 general scientific community rejected the Herzfeld  
2 index, because what that would say is using these  
3 assumptions, a 20-milligram tar product would --  
4 would -- could be -- I mean, could be interchangeable  
5 with a 5-milligram tar product, and if -- and frankly  
6 that has not been the views of the United States  
7 Surgeon General or the Independent Scientific  
8 Committee on Smoking and Health for many, many  
9 years.

10 They have instead suggested that a 5-milligram  
11 product may be, in -- in their view, less hazardous  
12 under their judgments than -- than something which  
13 was 20 milligrams, and that really goes to the point  
14 in terms of what Dr. Green was saying, is that  
15 perhaps the reason why the general scientific  
16 community rejected the Herzfeld index.

17 Q. Well, sir, you've never spoken with Dr. Green  
18 about this document, have you?

19 MR. SHEFFLER: Objection, argumentative.

20 A. The answer is no, I've not speak -- spoken with  
21 Dr. Green about this document.

22 Q. Have you spoken with Mr. Sheehy about this  
23 document?

24 MR. SHEFFLER: Objection, argumentative.

25 A. No.

1 Q. You don't know what Dr. Green meant at all other  
2 than what's written on this page; isn't that true?

3 MR. SHEFFLER: Objection. That's all you  
4 asked him.

5 A. No. All -- all I can tell you and -- and give  
6 evidence to is -- is what I see on this page but what  
7 I also know in terms of what has happened in the  
8 general scientific community and the approaches that  
9 the public health authorities have taken often in  
10 collaboration with the tobacco industry, and -- and  
11 that, I mean, clearly provides, as far as I can tell,  
12 a context to -- to, I think, what you may be implying  
13 that this document means.

14 I -- I can't see, I mean, in terms of the  
15 information that I know and understand in terms of  
16 what's happened that anything within this document  
17 is -- is other than Dr. Green saying, "Well, actually  
18 there's insufficient knowledge," and that clearly was  
19 the case and that that was what was understood by the  
20 scientific community. And that is the reason why you  
21 don't see any government around the world today or  
22 previously having adopted the Herzfeld index.

23 Q. Move to strike the answer after the word "No."

24 Sir, doesn't it also say on the first page "But  
25 undoubtedly we should try this exercise from time to

1 time"?

2 A. It does say that, and I think --

3 Q. Thank you.

4 A. That, I think -- sorry, could I just add --

5 finish my answer?

6 Q. Well I think you have answered my question,

7 sir.

8 MR. SHEFFLER: No, you cannot interrupt the  
9 witness's answer.

10 MS. WIVELL: Well we don't need his  
11 interpretation of what that says too.

12 MR. SHEFFLER: Well you --

13 MS. WIVELL: I asked him if that's what it  
14 says, and he's answered.

15 MR. SHEFFLER: I will --

16 MS. WIVELL: Thank you.

17 MR. SHEFFLER: I will object because you  
18 have taken one sentence again and again and again  
19 throughout this deposition out of context. You  
20 refused to read the entire com -- context of the  
21 document. You take one sentence out and then say,  
22 "Isn't that what it says?" without allowing the  
23 witness to put it into context, and when he tries to  
24 put it into context, you interrupt him.

25 Clearly the first sentence that you read was

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1 explained if -- more fully with the next sentence,  
2 and that is entirely consistent with the witness's  
3 entire testimony. You've taken it out of context and  
4 you refused to let him put the -- the sentence into  
5 context as read, and that is clearly objectionable.

6 MS. WIVELL: You said he has no foundation  
7 to put the sentence into context.

8 MR. SHEFFLER: He has the document in front  
9 of him. You take one sentence out. He can certainly  
10 read the next sentence to put it into context as --  
11 as --

12 MS. WIVELL: All right. Let's read the  
13 next sentence.

14 BY MS. WIVELL:

15 Q. Sir, doesn't it say "But undoubtedly we should  
16 try this exercise from time to time. As more  
17 information comes in someone else surely will"?

18 MR. SHEFFLER: Exactly.

19 A. That's what it -- it says in this note at the  
20 beginning, which is attached to Dr. Green's  
21 evaluation of the Herzfeld index, and I find that  
22 quite understandable in that since he says there's  
23 insufficient knowledge, one would assume that more  
24 knowledge would be accumulated through -- through  
25 time. What clearly has happened is that knowledge on

1 specific constituents of tobacco smoke hasn't  
2 developed because we don't understand the biological  
3 mechanisms to enable us to produce something like the  
4 Herzfeld index, and that's why there is no government  
5 in the world that -- that uses the Herzfeld index;  
6 instead they use tar yields.

7 Q. Now, sir, you can't find out what Dr. Green  
8 actually meant when he wrote this document, can you,  
9 today?

10 MR. SHEFFLER: Objection to the form. The  
11 document speaks for itself.

12 A. I mean, in terms of a -- a document written in  
13 1997, can I understand --

14 MR. SHEFFLER: I think you misspoke.

15 THE WITNESS: Oh, I'm sorry.

16 MR. SHEFFLER: It's 1977.

17 THE WITNESS: I did. I'm sorry.

18 A. I'm sorry, could you ask me the question again.  
19 I'll try and give you a proper response.

20 Q. Yes, sir. We cannot find out from Dr. Green  
21 actually what he meant when he wrote this document  
22 because he's dead; isn't that true?

23 A. I gather that --

24 MR. SHEFFLER: Objection to the form.

25 A. -- Dr. Green is -- is dead.

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1 Q. Now, sir, one of the things that Dr. Green had  
2 advocated from time to time was that the B.A.T. Group  
3 try and make a safer cigarette; right?

4 A. I think Dr. Green, as many people inside the  
5 company and -- and people external to the company,  
6 were working towards what might be -- might be deemed  
7 by public health authorities as a safer cigarette,  
8 yes.

9 Q. And --

10 And, sir, isn't it a fact that as soon as the  
11 Surgeon General of the United States issued his first  
12 report on smoking and health back in the '60s, that  
13 the B.A.T. Group tried to make a safer cigarette?

14 A. It was way before that. Actually what happened,  
15 in -- in 1954 or when the first reports by Wynder and  
16 by Doll came out, the statistical reports, and also  
17 the Wynder work on smoke condensates,  
18 British-American Tobacco immediately started  
19 collaborating with the British government and started  
20 contributing funds to The Tobacco -- well what was  
21 the forerunner of The Tobacco Products Research  
22 Trust. And so research was initiated immediately in  
23 collaboration with the British government and to try  
24 and understand the situation and try and identify  
25 whether there were ways to change the product in

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1 order -- in terms of where the public health  
2 authorities believed a cigarette might be safer in  
3 some way. That is absolutely correct.

4 Q. All right. And one of the things that was --  
5 was done was to try and modify the cigarette as  
6 measured by various different testing measurements;  
7 right?

8 A. Again as -- as you'll see through the whole  
9 history of research in-house and externally, there  
10 have been a -- a series of biological tests which  
11 have been used, the first probably being -- being  
12 suggested by Dr. Wynder through what he was doing in  
13 terms of mouse skin painting testing in the  
14 mid-'50s.

15 Q. Now another thing that could have been done was  
16 to teach the smoker to modify his smoker -- smoking  
17 habits by not inhaling; right?

18 MR. SHEFFLER: Objection to the form, lack  
19 of foundation.

20 A. Your question is that a smoker could be taught  
21 not to inhale. I don't know. I mean, I think  
22 clearly the views of some of the public health  
23 authorities have said, "Well, if you're going to  
24 smoke, inhale less."

25 THE WITNESS: Thanks very much.

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1 A. "Inhale less, smoke fewer cigarettes, smoke  
2 lesser cigarettes." I mean, one of the things that  
3 has been very clearly stated again by the U.S.  
4 Surgeon General, by the Royal College of Physicians,  
5 by the Independent Scientific Committee on Smoking  
6 and Health in the U.K., particularly of the early  
7 days is that if you smoke, for example, the first  
8 half of the cigarette, it's better because  
9 effectively the second half acted as a filter.

10 Q. All right. Well, sir, just so we're clear here,  
11 I am not asking for the opinions of the Surgeon  
12 General. I'm not asking you the opinions of any of  
13 the governmental agencies unless I ask for them.

14 I'm asking: Isn't it true that BATCO knew that  
15 one of the courses of action to make cigarette  
16 smoking safer for smokers was to teach smokers not to  
17 inhale as -- to inhale?

18 MR. SHEFFLER: I object to the statements  
19 by counsel and the instructions. If the witness  
20 wants to refer to anything that -- that he needs to  
21 to make his answer complete, he's entitled to do so.

22 A. And -- and the answer is you can't, I mean,  
23 separate out British-American Tobacco's research on  
24 this from what's happened with -- with particularly  
25 the British government because right at the beginning

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1 in 1954 there was significant collaboration between  
2 British-American Tobacco and -- and with -- with the  
3 general research establishment in that the public  
4 health authorities made fairly early assumptions on  
5 the basis of Wynder's research that it might be tar  
6 that was involved in -- as an explanation for the  
7 statistical relationships that had been found between  
8 smoking and in that case in those early days lung  
9 cancer. I think they may have concluded that less  
10 inhalation would result in a less dose of tar.

11 (Plaintiffs' Exhibit 601 was marked  
12 for identification.)

13 THE WITNESS: Thanks.

14 BY MS. WIVELL:

15 Q. Sir, showing you what's been marked as  
16 Plaintiffs' Exhibit 601, this is a document entitled  
17 "Meeting of Scientific Commission of ASFC at  
18 Fribourg, Friday, 31st January, 1964"; correct?

19 A. That's what's said at the top, yes.

20 Q. And among the people that are present is listed

21 D. G. F. from R&D at Southampton; right?

22 A. Yes.

23 Q. Do you understand that those are the initials of  
24 Mr. Felton, who we were discussing just a bit  
25 earlier?

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- 1 A. Yes.
- 2 Q. And we see based on his initials at the top of
- 3 the page that he authored this document; right?
- 4 A. It says "DGF/BMS/46D," yes.
- 5 Q. All right. And Mr. Felton was again an employee
- 6 of BATCO; correct?
- 7 A. At that stage he was R&DE, but yes, he's been an
- 8 employee of British-American Tobacco Company.
- 9 Q. Would you turn to the page that ends with Bates
- 10 number 053.
- 11 A. Yep.
- 12 Q. There do you see in -- toward the bottom of the
- 13 page the sentence that begins "'The Scientific
- 14 Commission concludes that there are two possible
- 15 courses of action"?
- 16 A. It says in quotes "'The Scientific
- 17 Commission" -- and I'm not sure which commission it
- 18 refers to -- "concludes ... there are two possible
- 19 courses of action."
- 20 Q. And the first one was "Education of the smoker
- 21 into modifying his habits, e.g. non-inhaling,
- 22 et cetera"; right?
- 23 MR. SHEFFLER: Let the record reflect that
- 24 Bates number 3053 that is being read from is from a
- 25 section entitled "Item 3, SGAC Report."

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1 A. Yeah. What -- what it says as -- as (a),  
2 "Education of the smoker into modifying his habits,  
3 e.g. non-inhaling, et cetera. This is not the  
4 manufacturer's job."

5 Q. All right. And isn't it a fact that it was the  
6 view of the tobacco industry that it wasn't their job  
7 to teach smokers to inhale -- not to inhale?

8 MR. SHEFFLER: Objection, lack of  
9 foundation, misconstrues the document.

10 A. I mean, I don't know in terms of this document.  
11 I mean, each one of these points is in quotation  
12 marks, and so I assume it's -- it's something which  
13 has been drawn directly out of -- of a commission's  
14 report noted as being SGAC report.

15 Q. Sir, move to strike as nonresponsive.

16 My question is simply this: Isn't it a fact  
17 that the tobacco industry didn't view teaching  
18 smokers to smoke more safely was its responsibility?

19 MR. SHEFFLER: Objection. The witness  
20 answered that question precisely. Asked and  
21 answered.

22 A. And again my response is the thing that you're  
23 referring to here in -- in -- in this document seems  
24 to be a quotation taken from a Scientific Commission  
25 noted as the SGAC in which one part of the view

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1 presumably of that commission was "This is not the  
2 manufacturer's job." Now I -- I need to know what  
3 the commission was in order to give you whose views  
4 those were. And what --

5 MR. SHEFFLER: Well --

6 A. -- whether -- whether British-American Tobacco  
7 feels that it is our view to educate smokers, well, I  
8 mean, I think in terms of being a responsible  
9 company, what you will see has happened is that we  
10 have certainly not tried to undermine the efforts of  
11 the public health authorities in the various  
12 suggestions that they have given in this matter, and  
13 certainly from time to time both in the United  
14 Kingdom and, I gather, in the United States, from  
15 what I read in the U.S. Surgeon General's report,  
16 that recommendations have been made by the public  
17 health authorities for people to adjust their smoking  
18 behavior if they wish to continue to smoke.

19 Q. Sir, public health authorities aside, you can't  
20 point us to one single public statement that any of  
21 the B.A.T. Group members have made that tells smokers  
22 that if they don't inhale, they can smoke more  
23 safely, can you?

24 A. The answer is no, and I think that's a very  
25 responsible approach, and what clearly has happened

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1 is that British-American Tobacco Company Limited have  
2 not tried to undermine what the public health  
3 authorities have given in terms of their view. I  
4 mean, and the fact is, is that the public have been  
5 aware of those public health authorities.

6 Now if you -- the question were to be have you  
7 found one single instance where British-American  
8 Tobacco has tried to repudiate what the public health  
9 authority on this -- this matter has been, then --  
10 then I would -- would show some concern to that  
11 matter, but -- but the fact is, no, you're absolutely  
12 right. British-American Tobacco has not attempted to  
13 undermine what the public health authorities have  
14 said.

15 Q. Move to strike the nonresponsive portion of the  
16 answer.

17 Sir, isn't it a fact that by the early '70s the  
18 B.A.T. Group companies had developed prototype  
19 cigarettes which had lower biological activity?

20 A. It is certainly true that, I mean, throughout  
21 our research his -- history we looked at various ways  
22 of -- of trying to modify products and such that they  
23 would give lower responses in whatever biological  
24 test was being used. That is absolutely consistent  
25 in terms of the work we did in collaboration with the

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1 British government really starting off from 1954 in  
2 terms of funding of independent research and also in  
3 the United States as -- as part of the Tobacco  
4 Working Group, which is obviously a National Cancer  
5 Institute program which ran for several years,  
6 precisely to that aim.

7 Q. Move to strike as nonresponsive.

8 Sir, isn't it a fact that by the early '70s  
9 BATCO had prototype cigarettes which were lower in  
10 biological activity than the cigarettes they were  
11 already marketing?

12 MR. SHEFFLER: Objection to the form,  
13 ambiguous as the term's not defined.

14 A. British-American Tobacco right from the  
15 beginning, as I've said before, started to look at  
16 what biological tests might be relevant to human  
17 health, just as the general scientific community did,  
18 and it did this very much in collaboration with in  
19 particular the British government. And -- and  
20 clearly a whole set of that program was aimed at  
21 seeing if there was product modifications which would  
22 be responsive to public health needs.

23 And as part of that, there were modifications  
24 and prototypes which were tested against various  
25 biological tests, and those tests varied through the

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1 years, just as they did in-house as they did  
2 externally, and very much what we tracked and worked  
3 in collaboration with were with the governments on  
4 this matter.

5 Q. So the answer is yes, that by the early '70s you  
6 had prototype cigarettes that were lower biological  
7 activity than those that were already being marketed;  
8 right?

9 MR. SHEFFLER: Object to the form. The  
10 answer is the answer. Asked and answered.

11 A. I mean, again in terms of response -- and I'll  
12 try and remember what I said to the -- to the last  
13 question because my response is exactly the same.  
14 What British-American Tobacco had done in  
15 collaboration with the British government and -- and  
16 in some respects the U.S. government through the  
17 Tobacco Working Group was trying to identify tests,  
18 the first of those being, for example, the one that  
19 was set up by Ernst Wynder, to look at product  
20 modifications, therefore prototypes, which might have  
21 lower biological activity, and what I mean by  
22 "biological activity" is -- is some reaction to a  
23 laboratory test, which is also the general  
24 understanding of biological activity.

25 And the answer is yes, there were prototypes

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1 there. Also the answer would be yes, in that as  
2 research continued and the introduction of lower-tar  
3 products came onto the market, those would have been  
4 seen as being lower in biological activity in some  
5 biological tests.

6 Q. Well, sir, you don't mean to imply that the  
7 United States government spent money with B.A.T.  
8 Group companies to market cigarettes, do you?

9 MR. SHEFFLER: Objection, mischaracterizes  
10 testimony.

11 A. I didn't -- don't think I tried to address that  
12 point at all. What I said is that --

13 Q. Well all this --

14 A. -- the Tobacco Working Group in the U.S. worked  
15 in collaboration with members of the British-American  
16 Tobacco Group for many years precisely through the  
17 National Cancer Institute to try and look at product  
18 modifications which might be regarded by them as  
19 being safer, and there was a whole series of work. I  
20 believe they looked at 150 different product  
21 modifications to try and identify, using the  
22 biological tests that they were using at that time,  
23 whether they could conclude that any particular  
24 cigarette was safer.

25 In their view, what they concluded at the end of

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1 that enormous piece of work -- and -- and I must say  
2 the U.K. government was doing something similar --  
3 was that, I mean, the only product modification that  
4 they could say might be safer to -- to -- for people  
5 to smoke was a lower-tar cigarette.

6 Q. Well now, sir, isn't it true that the B.A.T.  
7 Group worked on a variety of different designs of a  
8 safe cigarette?

9 MR. SHEFFLER: Objection. The testimony  
10 has been asked and answered.

11 A. And again, I mean, my response is as a  
12 responsible company, absolutely. What we did in  
13 collaboration often with governments, work and look  
14 at product modifications which might provide a -- a  
15 cigarette which would be deemed as safer in some  
16 fashion by the public health authorities. That was  
17 very much a -- a very serious and long-term product  
18 effort in collaboration with governments.

19 Q. Sir, isn't it a fact that people expected the  
20 manufacturers of cigarettes to do all in their power  
21 to make smoking safe?

22 MR. SHEFFLER: Objection, overbroad, vague,  
23 calls for speculation.

24 A. I mean, I can't speculate on what consumers  
25 thought. Only what is clearly the case is that

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1 British-American Tobacco has worked with a variety of  
2 people looking at ways to modify the product, and in  
3 fact, for example, to try and give something which  
4 will help you on that, I can read from "The Tobacco  
5 Products Research Trust" document, which is a review  
6 of the contribution of the U.K. tobacco industry to  
7 efforts precisely in this line from 1982 to 1996.  
8 It's a -- a document written by Cheryl Swann and Sir  
9 Peter Froggatt, and for example -- and it talks about  
10 the Independent Scientific Committee on -- on Smoking  
11 and Health.

12 Right at the beginning of this document it -- it  
13 says that -- talks about the funds that were  
14 contributed to the government from the industry and  
15 the work that they did together, and it says "Without  
16 these funds" -- I'm quoting now -- "there would"  
17 be -- "there would have been no research programme  
18 and no Trust! The industry, especially though not  
19 exclusively the companies' scientific research staff,  
20 took a healthy interest in the progress and results  
21 of the research programme, and in all ways  
22 relationships between ... Trustees and ... industry  
23 were amicable and constructive. This" contribution  
24 greatly -- sorry. "This contributed greatly to the  
25 success of the research programme. I like to think"

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1 it was "also in a wider sense both parties benefit.

2 I certainly did and I believe others did as well."

3 And I believe what Sir Peter Froggatt was

4 referring to there was this long-term program of

5 research looking at product modifications and that

6 may be helpful in terms of on smoking and disease.

7 Q. Are you done?

8 A. Yeah.

9 Q. Okay. Move to strike as nonresponsive.

10 Sir, would you turn to page 601.

11 MR. SHEFFLER: Of what?

12 MS. WIVELL: Or I'm sorry, Exhibit 601,

13 page 052.

14 A. Yes.

15 Q. All right. Do you see the sentence or --

16 Do you see the heading under item three, the

17 "SGAC Report"?

18 A. Yes, it says halfway down "Item 3, SGAC

19 Report."

20 Q. That's the Surgeon General's report, isn't it,

21 sir?

22 A. I'm not sure whether it is or not. What --

23 what -- this is 1964. The U.S. Surgeon General's

24 report was published in 1964, but I'm not sure what

25 date it was published in. If I just look here, I

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1 should be able to find out.

2 The same dates and years, so it may well refer  
3 to the U.S. Surgeon General.

4 Q. The second paragraph begins with the sentence "I  
5 suggested that it would be largely a waste of time in  
6 trying to pick holes in the report. The Commission  
7 should say to" the "ASFC that it" is "not possible to  
8 refute the report as a whole, and that the  
9 conclusions must be accepted in principle"; correct?

10 A. That's what it says here.

11 Q. And then in that same paragraph, it goes down to  
12 talk about what people would expect from cigarette  
13 manufacturers, doesn't it, sir?

14 A. Can I just read this a second and then I'll be  
15 able to respond.

16 (Witness reviews Plaintiffs' Exhibit 601.)

17 Q. Sir, and then in the same paragraph it goes on  
18 to talk about what people would expect from cigarette  
19 manufacturers; isn't that true?

20 A. It says at the end here to your point "People  
21 would however continue to smoke, but they would  
22 expect the manufacturers to do all in their power to  
23 make smoking 'safer'. This would mean more research  
24 into modified cigarettes and filters," yeah.

25 Q. All right.

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1 MR. SHEFFLER: Let the record reflect that  
2 the document has the word "safer" in quotations.

3 Q. Let me ask you this, sir: Before the Surgeon  
4 General's report came out, were cigarettes safe?

5 MR. SHEFFLER: Objection, vague.

6 A. I mean, I don't think -- well let me answer for  
7 British-American Tobacco. British-American Tobacco's  
8 never claimed that cigarettes are safe. We don't  
9 make health claims about cigarettes. In terms of  
10 where the public has -- has looked to this, actually  
11 if you -- I mean, if you look at the view of -- of  
12 James the First of England in the 16th Century, his  
13 view was that no, cigarettes are not safe; they're  
14 actually damaging to the lungs.

15 And clearly in terms of the public view well  
16 before the Surgeon General, in the United States, in  
17 the United Kingdom there was an assumption that  
18 cigarettes were not safe. For example, in the first  
19 World War, I believe the British soldiers referred to  
20 cigarettes as coughing nails, so I think there was a  
21 general public assumption that cigarettes were not  
22 safe.

23 Q. Well, sir, did British-American Tobacco share  
24 with the people who smoked its cigarettes James the  
25 First's opinion?

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1 A. James the First's opinion was clearly one that  
2 wasn't based on substantive science. Clearly what  
3 British-American Tobacco has done, as I said, we  
4 don't make health claims, but clearly what  
5 British-American Tobacco has done responsibly is to  
6 work with and develop science to the best of our  
7 ability and to look at ways in which cigarettes can  
8 be modified in various different ways, which may be  
9 responsive and -- to the public health authorities.

10 Q. Well, sir, are cigarettes safe today?

11 MR. SHEFFLER: Objection, vague.

12 A. And -- and again, I mean, for one thing, as a  
13 scientist, I mean, I can't tell you that eating a  
14 chocolate bar is safe. In terms of what science --

15 Q. But we're not talking about chocolate bars,  
16 sir.

17 MR. SHEFFLER: Don't interrupt the witness.

18 Q. We're talking about cigarettes.

19 MR. SHEFFLER: Objection. Do not interrupt  
20 the witness. He was in the middle of his answer, and  
21 that is improper. Please let the witness finish his  
22 answer.

23 MS. WIVELL: I move to strike as  
24 nonresponsive.

25 Q. Sir, are cigarettes --

1 MR. SHEFFLER: You cannot do that --

2 Q. -- safe today?

3 MR. SHEFFLER: You cannot do that, Counsel,  
4 until he finishes his answer. Would you please allow  
5 the witness to finish his answer.

6 Now you -- I think you ended up with for one  
7 thing, I can't tell you as a scientist that eating a  
8 chocolate bar is safe. Now you may continue your  
9 answer.

10 A. And -- and the reason I can't tell you that is  
11 as a matter of -- of science, it's not possible to  
12 define anything as -- as safe. People simply do not  
13 do that.

14 In terms of is the public view that cigarettes  
15 are safe, well no, the answer is -- is the public  
16 view is that they are not safe, and that's clearly  
17 the case since for many, many decades the view has  
18 been given to the public from the public health  
19 authorities that cigarettes are a cause of -- of lung  
20 cancer and other diseases.

21 MR. SHEFFLER: Let's take a break.

22 THE REPORTER: Off the record, please.

23 (Recess taken.)

24 BY MS. WIVELL:

25 Q. Sir, isn't it a fact that when I asked you

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1 earlier this morning if people expected manufacturers  
2 of cigarettes to do all in their power to make  
3 smoking safe, you told me you couldn't speculate on  
4 what consumers thought?

5 MR. SHEFFLER: Objection to the form of the  
6 question. The record speaks for itself.

7 A. I mean, I can't remember my precise words, but  
8 if you read them back to me, I can tell you again  
9 whether that's something I still agree with.

10 Q. Well do you agree that you can't tell us what  
11 consumers think?

12 MR. SHEFFLER: Objection, overbroad, vague  
13 and ambiguous and calls for speculation.

14 A. I mean, consumers -- and presumably you mean  
15 consumers who choose to smoke cigarettes -- there are  
16 many, many of them in the world. What any individual  
17 or even groups of individuals think, I'm not sure. I  
18 think again -- well I'll stop there because I'm not  
19 quite sure what your question is referring to.

20 Q. Sir, it is clear that the cigarette  
21 manufacturers have been able to remove the toxic  
22 components from cigarettes for years; isn't that  
23 true?

24 MR. FRANKEL: Object to form.

25 MR. SHEFFLER: Object, overbroad.

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1 A. It depends what you mean by the toxic components  
2 of cigarettes. What is clear is that  
3 British-American Tobacco has worked with -- with  
4 governments and public health authorities to try --  
5 try and identify what product modifications should be  
6 sensible, and what the result of that has been, as  
7 you can see from decades of work in -- in the U.K.,  
8 that the conclusion of the public health authorities  
9 is that the best way to approach this issue is to  
10 reduce tar. That is something that we have  
11 collaborated very significantly in in terms of the  
12 work with the U.K. government bodies and that is what  
13 is offered up today.

14 Q. Well, sir, isn't it a fact that despite numerous  
15 attempts to make a safe cigarette, that  
16 British-American Tobacco has never -- well, strike  
17 that.

18 There have been numerous attempts to design a  
19 safe cigarette by the B.A.T. Group; correct?

20 MR. SHEFFLER: Objection, asked and  
21 answered.

22 A. British-American Tobacco, as -- as I said  
23 previously, has worked really from the -- the -- the  
24 beginning of all this, really from 1954 in particular  
25 in terms of its contribution to independent research,

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1 and the aim has always been to look at product  
2 modifications which may be deemed by the public  
3 health authorities as being safer, yes.

4 Q. Well, sir, the B.A.T. Group has never sold a  
5 safe cigarette, have they?

6 MR. SHEFFLER: Objection to the form,  
7 vague.

8 A. I don't believe that any public health authority  
9 has ever said that any particular form of cigarette  
10 is safe. Certainly what the United States Surgeon  
11 General and -- and the Independent Scientific  
12 Committee on Smoking and Health in the U.K. have  
13 suggested to the public is that lower-tar products  
14 may be safer, and they have certainly encouraged  
15 people, if they choose to smoke, to smoke lower-tar  
16 products.

17 We have certainly invested a significant amount  
18 of work in -- in producing cigarettes which are very,  
19 very much lower in terms of their tar content.

20 Q. Move to strike as nonresponsive. Sir, I'm not  
21 asking what the United States government has done.  
22 I'm not asking what the British government has done.

23 I'm asking: Isn't it true that BATCO has never  
24 sold a safe cigarette?

25 MR. SHEFFLER: Objection to the form. It's

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1 vague. Objection to counsel's statements as  
2 improper, move to strike them.

3 A. And my answer, as -- as it has been throughout  
4 the day in the bit that we've been here, is that you  
5 can't separate out what British-American Tobacco has  
6 done from -- from what has happened with the public  
7 health authorities because in essence what our  
8 history has been is the collaboration with the public  
9 health authorities and the governments.

10 So, I mean, it's impossible for me to try and  
11 answer your questions in -- in a helpful manner by  
12 separating out the public health authorities because  
13 they're inextricably linked in terms of our actions.  
14 Q. Well did you tell the public health authorities  
15 that your lawyers were concerned that if you marketed  
16 a safe cigarette, it might imply that you -- your  
17 other cigarettes were guilty of causing disease?

18 MR. SHEFFLER: Objection to the form.  
19 Objection as this has been asked and answered. At  
20 this time I'd like to register an objection for the  
21 record as this deposition's been -- been taken for  
22 almost seven hours or thereabouts, and according to  
23 the meet and confer, there was supposed to be three  
24 hours spent on the issues of smoking-and-health  
25 public statements. We have now been spending almost

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1 seven hours on this, and I think that a lot of the  
2 questions are now getting into the stage of being  
3 repetitive, and I believe it's harassing and I don't  
4 believe that -- that it's appropriate.

5 A. I'm sorry, could you ask the question again.

6 Q. Certainly. Well did you tell the public health  
7 authorities that your lawyers were concerned that if  
8 you marketed a safe cigarette, it might imply that  
9 the other cigarettes that you were already selling  
10 were guilty of causing disease?

11 MR. SHEFFLER: Same objections.

12 A. I don't believe we made that statement to the  
13 public health authorities, and that's not  
14 surprising. If you look at our history, what you see  
15 is a whole history of collaboration with the British  
16 government and with other governments in -- in a  
17 serious and responsible attempt to look at product  
18 modifications which may be regarded by them as being  
19 safer.

20 MS. WIVELL: Mr. LaBorde, could you show  
21 the witness Exhibit 442, please.

22 (Plaintiffs' Exhibit 442 was handed  
23 to the witness.)

24 THE WITNESS: Thanks.

25 BY MS. WIVELL:

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1 Q. Sir, showing you what's been marked as  
2 Exhibit 442, this document begins with the statement,  
3 quote, "THERE HAVE BEEN EXPRESSIONS OF CONCERN BY  
4 LAWYERS THAT IF WE OVERTLY STATE THAT WE ARE  
5 ATTEMPTING TO REMOVE TOXIC AGENTS IN THE GAS PHASE  
6 AND PARTICULATE MATTER OF CIGARETTE SMOKE THAT WE ARE  
7 ADMITTING GUILT IN THE SMOKING AND HEALTH  
8 CONTROVERSY"; correct?

9 MR. SHEFFLER: Objection to form, lack of  
10 foundation. There's been no attempt to even identify  
11 this document for the record.

12 A. If you want me to -- to -- to give you a  
13 response that this is what it says at the top of this  
14 document, then the answer is yes.

15 Q. All right. And, sir, isn't it a fact that none  
16 of the B.A.T. Group members ever informed the public  
17 that if they sold a safer cigarette, it would imply  
18 that the cigarettes that were already being marketed  
19 were guilty of causing disease?

20 MR. SHEFFLER: Objection to the form of the  
21 question, objection to the assumptions built into the  
22 question that have not been established in this  
23 record.

24 A. I mean, to try and be helpful in a response to  
25 your question, what has clearly been the case for

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1 British-American Tobacco is that we worked closely in  
2 collaboration, as is -- is provided, for example,  
3 really quite in detail in -- in -- in the document I  
4 have before me, "The Tobacco" -- review of "The  
5 Tobacco Products Research Trust," and which -- which  
6 details the history of research that British-American  
7 Tobacco has done in collaboration with the public  
8 health authorities.

9 I mean, the fact is that that work has led to  
10 the public health authorities and the scientific  
11 community giving a view, certainly in the United  
12 Kingdom, that lower-tar products are -- are something  
13 that smokers, if they wish to smoke, may be preferred  
14 as -- as a matter of choice. I mean, the question  
15 of -- of safe or safer in terms of law I can hardly  
16 see could be raised again in terms of what public  
17 views are. I mean, way before the U.S. Surgeon  
18 General in 1964 and certainly even before the Royal  
19 College of Physicians in 1962, the public health or  
20 the public's view in terms of the general population  
21 was that smoking was a cause of -- of cancer.

22 Q. Move to strike as nonresponsive.

23 Sir, are you afraid to admit to the ladies and  
24 gentlemen of the jury that you -- your organization  
25 never informed the public that if they sold a safer

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1 cigarette, it might imply that cigarettes already  
2 being marketed were guilty of causing disease?

3 MR. SHEFFLER: Objection to the form of the  
4 question as argumentative, objection to the form of  
5 the question to the extent that it assumes facts not  
6 established by this record.

7 A. I'm not afraid in the slightest. All I'm trying  
8 to do is a matter of -- of -- of assisting you in  
9 terms of understanding what British-American  
10 Tobacco's action has been for many, many years, is --  
11 is tell you precisely what we have done as a  
12 responsible company. And what we have done as a  
13 responsible company is to work with public health  
14 authorities looking for a -- a product modification  
15 that would be accepted by the public health  
16 authorities and the scientific and academic  
17 communities as something which might be regarded as  
18 safer.

19 Q. That had nothing to do with lawyers; is that  
20 right?

21 MR. SHEFFLER: Objection to the form.

22 A. I mean, I'm a scientist. I mean -- I mean, I  
23 will give my views on the basis of science, and I  
24 think if you look at -- at the history, what you'll  
25 see is -- is a significant collaboration with

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1 governments in a quite open way. You'll see  
2 publications in the open literature. You'll see a  
3 program of research which was totally integrated  
4 into, for example, where the U.K. government went on  
5 all these matters.

6 And -- and -- and no, as far as I'm concerned as  
7 a scientist, it's nothing to do with lawyers.

8 Q. All right. But you cannot direct me to one  
9 single place, one single public statement, where any  
10 of the B.A.T. Group companies told the people who  
11 were smoking their cigarettes that if they smoked a  
12 safer cigarette, it might imply that there was a  
13 causal relationship with the cigarettes they were  
14 already marketing?

15 MR. SHEFFLER: Objection to the form of the  
16 question, objection to the assumptions in the  
17 question that have not been established by this  
18 record.

19 A. I mean, again what I'm -- I'm trying to -- to be  
20 helpful to respond to your question. What clearly  
21 has happened is -- is this collaboration with  
22 governments and governments have taken a view as to  
23 whether any particular product modification may be  
24 safer in their view. British-American Tobacco most  
25 clearly hasn't gone out and made statements that,

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1 "No, we won't say anything about a cigarette because  
2 it might have some implications to, I guess, a  
3 lawsuit" or whatever because that's not relevant.

4 What is relevant is -- is the science, and --  
5 and what is relevant is our significant cooperation  
6 with public health authorities trying to identify  
7 product modifications which could be regarded as  
8 safer.

9 Q. Sir, isn't it a fact that the B.A.T. Industries  
10 chairman refused to commit large-scale money  
11 resources to develop a safe cigarette?

12 MR. SHEFFLER: Objection to the form, lack  
13 of foundation. Objection as vague.

14 A. I don't know what you're referring to precisely,  
15 but the -- the -- the fact of the matter is that  
16 throughout our history and certainly since 1954 in  
17 the U.K. we have committed significant resources to  
18 try and identify product modifications which might be  
19 regarded as safer. And that is contributions to --  
20 to the U.K. government's program, and -- and for  
21 example, again if I refer you to this -- this Tobacco  
22 Products Research Trust review by Sir Peter Froggatt,  
23 it talks about the 8 million pounds and the 37  
24 projects that are undertaken in that trust  
25 specifically as a result of monies contributed by

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1 the -- the tobacco companies.

2 And that is one small element of the amount of  
3 research and -- and effort that's gone on in trying  
4 to seek the product modifications that might be  
5 regarded as safer.

6 Q. Move to strike the nonresponsive portions.

7 Sir, isn't it a simple fact that the chair of  
8 B.A.T. Industries made the decision that the B.A.T.  
9 Group would not commit significant resources to  
10 developing a, quote, "safe cigarette" because it  
11 might imply that the current product is unsafe?

12 MR. SHEFFLER: Objection to the form, asked  
13 and answered and vague.

14 A. I mean, if you're referring to a specific  
15 document, if you -- if you share that with me, I'll  
16 try and give some comments and give it in context.  
17 What -- what I'm saying to you is of my knowledge  
18 of -- of the history of British-American Tobacco, and  
19 our actions from -- from the '50s onwards, I believe  
20 they've been responsible and certainly significant  
21 efforts have been made in conjunction with public  
22 health authorities to try and identify product  
23 modifications which might be regarded as safer.

24 And -- and at the end of that, I mean, what the  
25 judgment has been made certainly in the United

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1 Kingdom is that it is lower-tar products that the  
2 public health authorities would regard as safer, and  
3 we worked very closely with them in trying to -- to  
4 manufacture products with filtration, with  
5 ventilation, which would -- would accede to their --  
6 their considerations.

7 MS. WIVELL: Mr. LaBorde, could you show  
8 the -- the -- the witness Exhibit 533, please.

9 (Plaintiffs' Exhibit 533 was handed  
10 to the witness.)

11 THE WITNESS: Thanks

12 BY MS. WIVELL:

13 Q. Sir, showing you what's been marked as  
14 Plaintiffs' Exhibit 533, this is a note that bears  
15 the name "P. SHEEHY, 18TH DECEMBER 1986" at the end;  
16 correct?

17 A. Yeah. It's not signed, but that's what it says  
18 at the end of this document.

19 Q. All right. And at the time that this document  
20 was written, Patrick Sheehy was chair of B.A.T.  
21 Industries P.L.C., wasn't he?

22 A. I believe that's the case.

23 Q. Now if you look in the second paragraph, he says  
24 "I have reviewed the position with my colleagues.  
25 Since there is such a wide discrepancy between your

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1 approach and that of the rest of the Group, I thought  
2 I should write to explain why it is that I cannot  
3 support your contention that we should give a higher  
4 priority to projects aimed at developing a," quote,  
5 "'safe' cigarette" -- quote, "cigarette"; correct?  
6 A. I mean, as a matter of -- of what you've just  
7 read, that is correct, and what I believe that this  
8 is referring to presumably is a set of research  
9 projects that were being proposed in an associated  
10 company in Canada.  
11 Q. Sir, have you ever seen this document before?  
12 A. Yes, I have.  
13 Q. Have you talked with Patrick Sheehy about this  
14 document?  
15 A. No, I have not.  
16 Q. Have you talked with Mr. Crawford about this  
17 document?  
18 A. No, I have not.  
19 Q. All right. Let's go to the second page. There  
20 it says in the third paragraph, quote, "A second  
21 practical objection is that in attempting to develop  
22 a," quote, "'safe,'" quote, "cigarette you are, by  
23 implication in danger of being interpreted as  
24 accepting that the current product is," quote,  
25 "'unsafe,'" quote, "and this is not a position that

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1 I think we should take"; correct?

2 MR. SHEFFLER: I would ask -- I would ask  
3 that for completeness sake and contextual sake that  
4 the next paragraph be read as well.

5 A. And my response was going to be that yes, you're  
6 correct, and it goes on to say "As you can see, there  
7 is no disagreement on the importance that we all  
8 place on the need for fundamental research leading to  
9 results which will have a practical impact on the  
10 acceptability of our product."

11 And then it goes on, I believe, to say that --  
12 or it does say here "Where we part company from the  
13 Imasco approach" -- and that refers to the Canadian  
14 associate -- "is that we do not believe ... there is  
15 a sufficiently high chance of a successful outcome to  
16 justify committing the very large scale of resources  
17 that would be necessary to pursue the direct but  
18 arguably over-simplistic approach which your people  
19 are proposing. This is why I cannot support this  
20 line of research."

21 And I think what that -- that -- once you -- you  
22 see that in context, my view -- and -- and as -- as I  
23 have said, I've not spoken directly with Sir Patrick  
24 Sheehy on this matter -- is that whatever the  
25 projects were being suggested -- and I don't have the

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1 accompanying documents on this from Imasco -- that  
2 they were -- they were projects that were oversim --  
3 oversimplified -- it says "over-simplistic" -- in  
4 their approach, but that the general thrust of Sir  
5 Patrick's noting of the importance that we all place  
6 on the need for research leading to results that  
7 would have a practical impact in -- on the  
8 acceptability of their product -- and I assume by  
9 that they mean public health acceptability -- is  
10 undeniable.

11 Q. Move to strike as nonresponsive.

12 Sir, my question is simply this: On the second  
13 page of this document, it says, quote, "A second  
14 practical objection is that in attempting to develop  
15 a," quote, "'safe,'" quote, "cigarette you are, by  
16 implication in danger of being interpreted as  
17 accepting ... the current product is 'unsafe' and  
18 this is not a position that I think we should take";  
19 correct?

20 A. I mean, it says -- it says that in -- in this  
21 document, and -- and I would assume --

22 Q. Thank you, sir.

23 MR. SHEFFLER: Wait, wait, he can --

24 Q. I don't need your assumptions.

25 MR. SHEFFLER: No. He is --

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1 MS. WIVELL: No, I don't need his  
2 assumptions.

3 MR. SHEFFLER: Then you can move to strike  
4 as --

5 MS. WIVELL: I move to strike as  
6 nonresponsive.

7 MR. SHEFFLER: After he finishes his  
8 answer.

9 MS. WIVELL: No, sir.

10 MR. SHEFFLER: You can --

11 MS. WIVELL: We don't need -- we can call  
12 the judge if you'd like. The man hasn't talked to  
13 anybody. I asked him what it said. He's answered  
14 the question. We're going to move on.

15 MR. SHEFFLER: No, we're not going to --

16 MS. WIVELL: Yes, we are.

17 MR. SHEFFLER: Excuse me, Counsel. If all  
18 you're going to have this witness do is read a  
19 sentence out of context from a document which is  
20 explained later in the document and you're going to  
21 just have him read that for -- for you into the  
22 record, that's improper. That's not deposition  
23 practice.

24 This witness is here as a 30.02(f) witness to  
25 address the --

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1 MS. WIVELL: That's right.

2 MR. SHEFFLER: -- issues related to the  
3 discovery notice. He is here to not read to you from  
4 documents sentences that you pick out, that want to  
5 take out of context. He is here to put these  
6 sentences into context and to give you answers that  
7 are responsive to your questions.

8 He was doing that. You interrupted him. It's  
9 inappropriate, and he is allowed to finish his  
10 answer.

11 MS. WIVELL: His answer is complete. He  
12 has answered my question.

13 MR. SHEFFLER: He's -- he has not answered  
14 his -- your question until he's done.

15 MS. WIVELL: He has too, and we're going to  
16 move on.

17 MR. SHEFFLER: And he is entitled to answer  
18 the question in the way he sees proper, and if you  
19 want to take a sentence out of context and say, "Did  
20 I read that correctly?" we will stipulate that you  
21 can read. You don't need to do that in this  
22 deposition.

23 If you want the witness to respond to questions  
24 about what is said in documents, then you have to let  
25 him respond entirely.

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1 MS. WIVELL: And I'm going to ask him a  
2 question that will allow him to respond.

3 MR. SHEFFLER: Well you did ask him a  
4 question and he was responding.

5 MS. WIVELL: I did ask him a question and  
6 he did respond.

7 BY MS. WIVELL:

8 Q. Now --

9 MR. SHEFFLER: But he did not respond  
10 completely and he has a right to finish his answer.

11 Q. Now, sir, you --

12 MR. SHEFFLER: Are you going to refuse --

13 MS. WIVELL: Excuse me, sir.

14 MR. SHEFFLER: No, no. Are you going to  
15 refuse --

16 MS. WIVELL: Why don't you let me go on?

17 MR. SHEFFLER: I'm not done. You've  
18 interrupted me continually throughout this and I  
19 haven't complained, but I will complain if you  
20 interrupt the witness. I'm not finished with my  
21 objection.

22 He is in the middle of an answer. He was in the  
23 middle of a sentence. You interrupted him. That's  
24 wrong. That's inappropriate. He has the right to  
25 complete his answer. You have the right to move to

1 strike it if you believe that it's nonresponsive, but  
2 he has a right to complete the answer. Are you going  
3 to let him complete his answer?

4 MS. WIVELL: No, sir. I'm going to go on  
5 and ask another question --

6 MR. SHEFFLER: Are you withdrawing --

7 MS. WIVELL: -- and perhaps that will --  
8 perhaps that will solve your problem.

9 MR. SHEFFLER: No, it won't solve my  
10 problem because each question and answer, as you know  
11 and as I know and as -- as -- as is recognized,  
12 stands alone, and if you're not going to let him  
13 complete his answer, then I -- I would request you to  
14 withdraw your question.

15 BY MS. WIVELL:

16 Q. Sir --

17 MR. SHEFFLER: Are you going to withdraw  
18 your question?

19 MS. WIVELL: I'm going to go on. Excuse  
20 me.

21 MR. SHEFFLER: Then he should --

22 MS. WIVELL: Why don't you listen to my  
23 question?

24 MR. SHEFFLER: He -- I did listen to your  
25 question. He was in the middle of the answer to it.

1 He listened to your question and he was responding.

2 He was in the middle of an answer.

3 Is he going to be entitled to finish his answer  
4 or are you going to withdraw the question?

5 MS. WIVELL: Oh, you can let him go on.

6 That will be just fine, and you can fill this record  
7 with all sorts of things that are nonresponsive if  
8 that's what you want.

9 MR. SHEFFLER: I want the record to be  
10 complete.

11 MS. WIVELL: Oh, I'm sure you do.

12 MR. SHEFFLER: And I want the witness to --

13 MS. WIVELL: Let me re-ask the question.

14 All right?

15 MR. SHEFFLER: Fine. Then you're  
16 withdrawing the original question?

17 MS. WIVELL: No, I'm not withdrawing the  
18 original question. I'm going to re-ask for now the  
19 fourth time the question.

20 BY MS. WIVELL:

21 Q. Sir, on the second page of this document, it  
22 states, quote, "A second practical objection is that  
23 in attempting to develop a," quote, "'safe,'" quote,  
24 "cigarette you are, by implication in danger of  
25 being interpreted as accepting that the current

1 product is," quote, "'unsafe,'" quote, "and this is  
2 not a position I think we should take"; correct?

3 A. That's what it says as -- as one paragraph of  
4 these two pages of -- of writings by Sir Patrick  
5 Sheehy, but, I mean, that's one part of -- of what's  
6 been said here. And for example, on the first page,  
7 it says "Wherever strong guidance is offered by  
8 reputable scientists on product modification, which  
9 they believe would be desirable, we will respond."

10 And I think in terms of -- of -- of trying to  
11 provide you with as much help as possible in terms of  
12 where British-American Tobacco has gone in its  
13 history, I mean, that clearly has been one of the key  
14 points, that it's been in collaboration with  
15 governments, it's been working in -- in every single  
16 way we can to find product modifications which would  
17 be regarded by people, by the public health  
18 authorities as being safer in some fashion.

19 MS. WIVELL: Why don't -- why don't we go  
20 off the record while you have to get your marker.

21 THE REPORTER: Off the record, please.

22 (Recess taken.)

23 (Category I deposition commenced and will  
24 be bound under separate cover labeled  
25 "Volume II-A.")

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1 BY MS. WIVELL:

2 Q. Sir, I've asked you to look at Exhibit 502;

3 correct? Do you have it in front of you?

4 A. Yes, I do.

5 Q. Isn't it a fact that BATCO knew smokers were in

6 doubt about their smoking habit and its health

7 implications at the time this document was written?

8 MR. FRANKEL: Object to form.

9 MR. SHEFFLER: Yeah, overbroad.

10 A. I mean, the document was -- at least this public

11 affairs document was written in 16th of May 1980. I

12 mean, my view of -- of my understanding of what's

13 happened in the public arena is that no, I would have

14 thought that certainly many, many years before 1980

15 that the general public were well view -- aware of

16 the views of the public health authorities.

17 Q. Could you turn to the page that ends with

18 exhibit -- or with number 328. There do you see a

19 heading "What we say to our consumers about their

20 smoking habit"?

21 A. 5(b) says "What we say to our consumers about

22 their smoking habit," yeah.

23 Q. And in that paragraph it says "Like other

24 members of the public he is also in doubt about his

25 habit and its health implications"; correct?

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1 A. I'm sorry, I can't quite find that. Do you want  
2 me to just read this a second?

3 Q. Why don't you read that paragraph to yourself,  
4 sir.

5 A. Thanks.

6 (Witness reviews Plaintiffs' Exhibit 502.)

7 A. I've read --

8 Q. All right.

9 A. -- at least what -- what 5(b) says.

10 Q. It says there with regard to consumers and their  
11 smoking habits, quote, "Like other members of the  
12 public he is also in doubt about his habit and its  
13 health implications," close quote; correct?

14 A. That's what it said as part of this paragraph  
15 here, yeah.

16 Q. All right. Have you talked to anybody who was  
17 involved in writing this document?

18 A. Well I know Michael Leach, who -- who seems to  
19 be one of the -- the people involved in this. He's a  
20 public affairs person. In terms of, I mean, trying  
21 to put this into some useful context to you in terms  
22 of where the company's history has been, it's  
23 certainly my view as to whatever the public affairs  
24 guys were doing here in terms of coming up with  
25 assumptions or hypotheses, the fact is that the

1 company has acted responsibly throughout its -- its  
2 history in terms of ensuring that it doesn't do  
3 anything which would countermine what the public  
4 health authorities have done in relation to -- to  
5 smoking and health.

6 And I'm sure whatever -- whatever the  
7 interpretations of -- of -- of whatever -- whoever  
8 wrote this document -- I'm kind of struggling back  
9 and forth; I think it is Michael Leach -- was meaning  
10 at the time, I'm sure certainly in the 1980s that it  
11 wasn't the case that -- that anyone certainly in the  
12 United Kingdom was unaware of the fact that the  
13 predominant view by the public health authorities  
14 that -- was smoking was a cause of cancer and other  
15 diseases, and I'm sure at that stage there were  
16 fairly broad health warnings on the packets too.

17 Q. Move to strike as nonresponsive.

18 Sir, my question is simply this: You've never  
19 talked to anyone who was involved in drafting this  
20 document about it, have you?

21 A. My answer is that I have spoken to Michael Leach  
22 on a -- a variety of matters in relation to -- to  
23 public affairs and for -- for many years in the  
24 company. He was a -- a public affairs officer for  
25 many years.

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1           The fact is that whatever was -- I mean, I don't  
2 know what this document is, whether it was something  
3 that was a proposal, whether it was something that  
4 was his own individual think piece, but the fact is  
5 certainly in -- in 1980 I can't imagine certainly in  
6 the United Kingdom where this was written there was  
7 any doubt in anyone's mind in the public as to the  
8 views of what the public health authorities were  
9 saying on smoking and health.

10 Q.   Move to strike as nonresponsive.

11           Sir, my question is simply this: You didn't  
12 talk to Michael Leach about this particular document,  
13 did you, sir?

14           MR. SHEFFLER: Objection, asked and  
15 answered.

16 A.   No. The answer is as to this specific document,  
17 no, I have not had a conversation with Michael  
18 Leach. As again, I mean, I'll answer that I've had  
19 general conversations with -- with Michael Leach as  
20 to -- to what public affairs has been within  
21 British-American Tobacco for some -- some years, and  
22 again in terms of the statement that is made here --  
23 and it's kind of hard to understand what is meant by  
24 the statement. It says "Like other members of the  
25 public he" -- presumably that means the public -- "is

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1 also in doubt about his habit and its health  
2 implications." I don't know what the "doubt" means.  
3 In terms of the context of it, what it says is the  
4 consumer, presumably a smoker, being under extreme  
5 pressure. The fact is in 1980 it would be -- I would  
6 be amazed if there was anyone in the United Kingdom  
7 who hadn't heard the predominant view of the  
8 government and the public health authorities that  
9 smoking was a cause of lung cancer and other  
10 diseases.

11 Q. Move to strike the nonresponsive portion of the  
12 answer.

13 Sir, what BATCO did know is that many smokers  
14 made psychological adjustments to reduce the conflict  
15 between smoking and their concern for health; isn't  
16 that true?

17 MR. SHEFFLER: Object to the form, vague.

18 A. I'm sorry, can you repeat it again. It's quite  
19 complicated.

20 Q. Certainly. What BATCO did know is that many  
21 smokers made psychological adjustments to reduce the  
22 conflict between smoking and their concern for their  
23 health; isn't that true?

24 MR. SHEFFLER: Same objection.

25 A. I mean, British-American Tobacco, I don't

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1 believe, knew that. As a matter of fact, it may have  
2 been speculated in a variety of -- of -- of projects  
3 by individuals trying to identify issues related to  
4 smoking behavior. I mean, it's certainly clear  
5 that -- that the reasons why people smoke and their  
6 motivations for smoking are extremely complex, and  
7 again I would refer to this -- this report of The  
8 Tobacco Products Research Trust, and their overview  
9 is that it was one of the areas that they were  
10 researching. And they conclude that, I mean, it's  
11 still not quite understood exactly why people smoke  
12 and -- and where -- where their smoking behavior  
13 comes from.

14 Q. Sir, who was M. Oldman?

15 A. I assume you refer to a gentleman called Martin  
16 Oldman, who was a research scientist at  
17 British-American Tobacco during some period.

18 Q. He was a psychologist, wasn't he?

19 A. I think his formal qualifications were that he  
20 was a psychologist.

21 Q. And he was hired to look at smoker psychology,  
22 wasn't he?

23 MR. SHEFFLER: Objection to the form.

24 A. I'm not sure what his precise hire was. He  
25 certainly undertook a variety of projects trying to

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1 understand smoking or smokers, just as was requested  
2 again by a variety of the public health authorities  
3 in terms of trying to get a greater understanding  
4 of -- of how and why people smoke.

5 (Plaintiffs' Exhibit 603 was marked  
6 for identification.)

7 THE WITNESS: Thanks.

8 BY MS. WIVELL:

9 Q. Sir, showing you what's been marked as  
10 Plaintiffs' Exhibit 603, this is a document which  
11 begins with Bates number 105562110; correct?

12 A. Correct.

13 Q. And if we turn to the second page of the  
14 document, it is a report of Group Research and  
15 Development Centre, British-American Tobacco Company;  
16 right?

17 A. Yeah, it's -- it's Report Number RD.1670, and I  
18 would imagine it is British-American Tobacco  
19 Company's report.

20 Q. Well it's Report Number RD.1670 Restricted,  
21 isn't it, sir?

22 A. That's what it says.

23 Q. All right. And it's entitled "CIGARETTE  
24 SMOKING, HEALTH, AND DISSONANCE, (PROJECT LIBRA),"  
25 INTRO -- "INTRODUCTION AND METHOD"; correct?

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1 A. It says, "CIGARETTE SMOKING, HEALTH, AND  
2 DISSONANCE," then in -- in brackets "(PROJECT  
3 LIBRA)," and then it goes on point "I. INTRODUCTION  
4 AND METHOD."

5 Q. And the distribution list for this report is at  
6 the bottom of the page that we've been looking at;  
7 isn't that true?

8 A. Yeah, this is a distribution list here.

9 Q. And the people that are listed there include  
10 B.A.T. Group employees worldwide; right?

11 A. No. It -- it's -- I mean, it -- it doesn't go  
12 to BATCO employees worldwide, but there are a variety  
13 of people here employed at different parts within the  
14 British-American Tobacco Group.

15 Q. All right. In various associate companies  
16 throughout the world; right?

17 A. Yeah. I mean, I identify here, for example,  
18 a -- a doctor from Brazil, Dr. Siqueira, and some  
19 doctors from Germany.

20 Q. Now Project LIBRA was a study -- I'm sorry,  
21 strike that.

22 Project LIBRA was a survey undertaken among  
23 current cigarette smokers, ex-smokers and never  
24 smoke -- never smokers in the United Kingdom; right?

25 A. I mean, that's what it says on -- on the first

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1 page, the Bates 113, is -- is that -- the  
2 introduction to that term --

3 Q. And --

4 A. -- project, yes.

5 Q. -- by "never smokers," that's people who have  
6 never smoked?

7 A. I would assume "never smokers" means people  
8 never choosing to smoke, yeah.

9 Q. And one of the things that Project LIBRA did was  
10 to look at ways in which these three groups could  
11 distinguish in terms of their attitudes with regard  
12 to health and smoking-and-health issues; right?

13 A. Yeah, it says as point (i) in this -- this piece  
14 of the summary that "The principal objectives of the  
15 research are to explore (i) the ways in which  
16 smokers, ex-smokers and never-smokers can be  
17 distinguished in terms of their attitudes to health  
18 in general, and smoking and health in particular."

19 Q. And another object -- strike that.

20 Another objective of Project LIBRA was to look  
21 at psychological differences which best predict the  
22 modes of conflict resolution an individual will  
23 employ in relating to smoking and concern for health;  
24 right?

25 MR. SHEFFLER: I'd just like the record to

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1 reflect that as counsel's reading from the document,  
2 that the first words of that sentence were "the  
3 indices of psychological differences."

4 A. And it says that with the addition of, I mean,  
5 it says "The indices" at the beginning, but other  
6 than that, that's what it says here on -- on this  
7 summary page.

8 Q. Now, sir, if we turn to page 16 and 17 of this  
9 report, it lists reasons why smokers keep smoking  
10 despite the apparently good reasons for them to stop;  
11 correct?

12 A. I'm not sure. Page 16 that I have starts with  
13 the question --

14 Q. Oh, I'm sorry. Let me rephrase the question.

15 If we turn to the page that ends with Bates  
16 number 116 --

17 A. Sorry.

18 Q. -- through 117 --

19 A. Yeah.

20 Q. -- we see various reasons that this project  
21 determined that smokers keep smoking despite  
22 apparently good reasons for them to stop; right?

23 MR. FRANKEL: Object to form.

24 A. I mean, what it says on page four of the report,  
25 which is the Bates 116, it says that -- talks about

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1 "Whilst such an hypothesis" -- and I haven't read  
2 this again; I've seen it in the past, but I haven't  
3 read it again to fully give to you what the  
4 hypothesis is -- "is only tentative, it highlights an  
5 important gap in our knowledge of the consumer ...."  
6 It goes on to say "We would suggest that there are at  
7 least five modes through which such a defense,"  
8 whatever that defense is, "may be obtained," yeah.  
9 Q. All right. And basically what they're talking  
10 about is how people who believe they should quit or  
11 want to quit -- well strike that. Let me start  
12 again.

13 And basically what's listed here are five  
14 methods that people employ who despite their desire  
15 to quit they keep smoking and rationalize the reason  
16 for doing so; right?

17 MR. SHEFFLER: Object to the form, vague,  
18 ambiguous, misconstrues the document.

19 A. This talks about five modes as a hypothesis, and  
20 again I guess this is a document which is talking  
21 about methods as opposed to any actual research or  
22 result. It's hypothesizing there may be a variety of  
23 ways. It does these five molds -- I'm sorry, modes,  
24 m-o-d-e-s, where people may be considering the  
25 matters that you are -- that you're suggesting in



1 your question.

2 Q. One of those modes was "By rationalising the  
3 health issue"; correct?

4 A. That's one of the hypotheses set forth here, and  
5 point (a) says "By rationalising the health issue."

6 Q. All right. Another method that is hypothesized  
7 here is "By 'statistical' rationalisation of the  
8 health issue"; right?

9 MR. SHEFFLER: Let the record reflect  
10 "statistical" is in quotes.

11 A. I mean, the point (b) says "By," in quotes,  
12 "'statistical,'" end quotes, "rationalisation of the  
13 health issue."

14 Q. Another method was "By modifying smoking  
15 behaviour"; correct?

16 A. Yeah, point (c) says "By modifying smoking  
17 behaviour."

18 Q. Another action was or --

19 Another hypothesis was "By denying the authority  
20 of anti-smoking information"?

21 A. Yes, exactly right. Another hypothesis was, as  
22 one of these five modes, point (d), "By denying the  
23 authority of anti-smoking information."

24 Q. And in fact, it was suggested that smokers are  
25 less likely than nonsmokers to believe what the

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1 government says about smoking and health; correct?

2 MR. FRANKEL: Object to form.

3 A. Well what it -- what it says here is "Evidence  
4 from Operation Aquarius (op.cit.) suggests that  
5 smokers are less likely than non-smokers to believe"  
6 that, in quotations, "'the things that the  
7 government says about cigarette smoking and its  
8 effects on health,'" end quotes, "and" they're "less  
9 likely to accept," begin quotes, "'the things  
10 doctors say about cigarette smoking and its effects  
11 on health,'" end quotes, dash, "the latter because  
12 doctors themselves smoke and," beginning quotes,  
13 "'doctors don't always agree with one another,'" end  
14 quotes. Okay.

15 Q. And, sir, isn't it also a fact that one of the  
16 hypotheses is that because there was a controversy or  
17 a claimed controversy, it allowed addicted smokers to  
18 continue to rationalize their smoking addiction?

19 MR. SHEFFLER: Objection to the form of the  
20 question, calls for speculation and also assumes  
21 facts not established in this record.

22 A. I don't see the word "controversy." It says  
23 point (e) here, "By acknowledging the risks attached  
24 to smoking." It goes on to say "Such a mode would be  
25 expressed in agreement with a statement such as," in

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1 quotations, "'smoking might be harmful but I cannot  
2 stop' or" -- sorry, end quotations, "or," start  
3 quotations, "'the enjoyment I get from smoking is  
4 worth any small risks it might involve,'"   
5 quotations. "In the latter case, agreement  
6 presupposes that the risks are genuinely perceived as  
7 'small' and some rationalisation has allowed that  
8 conclusion to be reached." Again, I mean, some  
9 hypothesis was being set up.

10 Q. All right. Well, sir, the research that is  
11 discussed with regard to Project LIBRA was carried  
12 out, wasn't it?

13 A. Yeah, I believe Project LIBRA was a -- a project  
14 that was carried out as a -- as a general way again  
15 as -- as -- as -- as part of really what the -- the  
16 public and scientific community had been doing as  
17 trying to identify rationales and reasons for people  
18 choosing to smoke.

19 Q. All right. And as a matter of fact, Project  
20 LIBRA substantiated these five modes of -- I'm sorry,  
21 strike that.

22 Project LIBRA substantiated these five  
23 hypotheses that are set forth in this document;  
24 right?

25 MR. SHEFFLER: Object to the form.

1 A. I mean, it's my understanding that they didn't  
2 substantiate. What they did was set a hyp --  
3 hypothetical framework and then tried to put people  
4 into hypothetical frameworks rather than making  
5 anything established.

6 Q. All right. Well fair enough. Basically the  
7 scientific work that was done after this document,  
8 Exhibit 602 -- or 603, was written basically showed  
9 that smokers did fall into these various categories;  
10 correct?

11 MR. SHEFFLER: Objection, misconstrues the  
12 prior testimony.

13 A. No, my understanding of the project is that they  
14 hypothesized by setting up a set of categories and  
15 they tried to fit people into those, not -- not --  
16 they didn't establish at all that those categories  
17 are actually correct. What they did is try to take  
18 people and put them into those hypothetical  
19 categories.

20 Q. All right. Perhaps we're -- we're agreeing  
21 here. Basically they found that people fit in these  
22 categories; --

23 MR. SHEFFLER: Objection, misconstrues  
24 testimony.

25 Q. -- right?

1 A. I mean, I think they put people into those  
2 categories. I'm not sure they found they actually  
3 fit it. But, I mean, they set up a hypothesis and  
4 then put people into those categories as far as I  
5 can -- I remember.

6 Q. And as a matter of fact, after that work was  
7 done, the B.A.T. Group held a worldwide Marketing  
8 Conference whose aim was to determine how to provide  
9 smoker satisfaction and help consumers rationalize  
10 their decision to smoke; isn't that true?

11 MR. SHEFFLER: Objection to the form.

12 MS. WIVELL: Well let me rephrase the  
13 question.

14 Q. After that work was done, the B.A.T. Group held  
15 a worldwide Marketing Conference, one of whose  
16 purposes was to help consumers rationalize their  
17 decision to smoke?

18 A. I mean, it's certainly true that there was a  
19 conference held which I believe was a joint  
20 marketing/R&D conference which was held after  
21 whatever date this was, 1979, so I believe it was  
22 after and -- this research from -- from Oldman. What  
23 I understand of -- of that conference is it was  
24 people throwing around ideas. I don't believe there  
25 was any significant effort upon behalf of the company

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1 at any time to go forward into the public arena and  
2 with smokers and try and get people to rationalize  
3 their -- their -- their smoking.

4 I think what it generally was all about was  
5 trying to understand smokers, effects of the -- and  
6 then if you're to be a successful commercial  
7 company -- and it doesn't matter what products you  
8 sell -- you need to understand consumers in order  
9 that you can make a product which best satisfies  
10 their demands. And I think that's probably what it  
11 was all about.

12 Q. You didn't attend that conference, did you,  
13 sir?

14 A. No, I did not.

15 Q. Have you read the proceedings of the Smoking  
16 Behaviour - Marketing Conference?

17 A. Yes, I have.

18 (Discussion off the stenographic record.)

19 (Plaintiffs' Exhibit 604 was marked  
20 for identification.)

21 THE WITNESS: Thanks.

22 BY MS. WIVELL:

23 Q. Sir, showing you what's been marked as  
24 Plaintiffs' Exhibit 604, this is a document that  
25 begins with Bates number 536000000; right?

1 A. Correct.

2 Q. Okay. And it is the proceedings of the Smoke  
3 Behaviour - Marketing Conference, July 9th through  
4 12th, 1984, Session I; correct?

5 A. That's what it says on this copy on the front.  
6 I assume that was attached to the document at some  
7 stage.

8 Q. All right. And if we look at the page that ends  
9 with Bates number 1, we see the distribution of the  
10 report; correct?

11 A. There's a distribution here, yeah.

12 Q. And if we look at the page which ends with Bates  
13 number 4, we see a list of delegates that attended  
14 this conference; right?

15 A. Let's see. "LIST OF DELEGATES ATTENDING THE  
16 1984 SMOKING BEHAVIOUR/MARKETING CONFERENCE," yes,  
17 there's a list of people here.

18 Q. And it would be fair to say that the B.A.T.  
19 Group brought together people from associated  
20 countries involved in tobacco and cigarette sales  
21 worldwide; correct?

22 MR. SHEFFLER: Object to the form.

23 MS. WIVELL: Let me rephrase the question.

24 Q. It would be fair to say that the B.A.T. Group  
25 brought together delegates from associate countries

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1 involved in cigarette sales worldwide; correct?

2 MR. SHEFFLER: Object to the form.

3 A. What I see from this list is -- is delegates  
4 from areas where we had research establishments.

5 Q. And those research establishments are all in  
6 associated companies which sell cigarettes; correct?

7 A. I mean, I think in terms of, I mean,  
8 British-American Tobacco Company, based in the U.K.  
9 but clearly sells cigarettes in various places.  
10 British-American Tobacco Germany clearly does sell  
11 cigarettes. U.S. -- I assume that's Brown &  
12 Williamson -- does. Australia, I assume that's  
13 Wills, and they do. And Canada, which is an  
14 associated company, yes, they -- they sell  
15 cigarettes.

16 Q. The Canadian association or --

17 The Canadian associate company is Imasco, isn't  
18 it?

19 A. It's called Imperial Tobacco Company. Imasco I  
20 think is a holding company which has more than  
21 tobacco concerns. I -- I would tend to refer to the  
22 Canadian associate company as Imperial Tobacco  
23 Company.

24 Q. But Imasco is the holding company that's above  
25 Imperial in the chain of command, so to speak?

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1 A. I believe that's correct. I don't know their  
2 structure very well. The only people that really I  
3 dealt with in -- in Canada would be people at  
4 Imperial Tobacco Company Limited.

5 Q. All right. This conference was actually held in  
6 Louisville, wasn't it? I'm sorry, strike that.

7 A. I think it was in Canada, wasn't it?

8 Q. This conference was actually held in Montreal,  
9 Quebec, wasn't it?

10 A. Yeah, it was in Montreal, Quebec.

11 Q. And the opening remarks were given by Tilford  
12 Riehl, weren't they?

13 A. Let me see if I can find the schedule. No, it  
14 says opening remarks from ITL by P. J. Dunn. That's  
15 Session I.

16 Q. All right. Let me rephrase the question, or  
17 I'll restate the question.

18 The opening remarks were given by Dr. P. J. Dunn  
19 from the Canadian associate company; right?

20 A. It's from P. J. Dunn of Imperial Tobacco  
21 Limited. That's what "ITL" stands for here, yeah.

22 Q. All right. And according to the first paragraph  
23 of those opening remarks -- strike that.

24 The opening remarks are recorded here beginning  
25 at page 5; right?

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1 A. On Bates number 5, yes, it says "OPENING  
2 REMARKS."

3 Q. And according to the opening remarks, the first  
4 paragraph, the basic question to be addressed at the  
5 conference was "... HOW DO WE PROVIDE SMOKER  
6 SATISFACTION FROM A LOWER TAR BASE WITH SPECIFICALLY  
7 ENHANCED ACCEPTABILITY TRAITS, AND AT THE SAME TIME  
8 HELP OUR CONSUMER RATIONALIZE HIS DECISION TO SMOKE  
9 IN LIGHT OF INCREASING EXTERNAL PRESSURES"; correct?

10 A. Yeah. I mean, the whole paragraph of the  
11 opening remarks reads "ONE WAY OF DEFINING SMOKING  
12 BEHAVIOUR HAS BEEN THE FUNDAMENTAL UNDERSTANDING OF  
13 THE COMPLETE SMOKING PROCESS, BUT I FEEL THAT THIS  
14 DEFINITION SHOULD BE ENHANCED TO INCLUDE THE COMPLETE  
15 SMOKER PROCESS. IN OTHER WORDS WE MUST UNDERSTAND  
16 ALL ELEMENTS WHICH MAKE UP OUR CONSUMER, HIS WANTS  
17 AND NEEDS, TRANSLATE THESE, USING PRODUCT, PACK  
18 IMAGERY, ADVERTISING, INTO SOME SPECIFIC BRAND  
19 DIRECTION WHICH INEVITABLY WILL MEET THOSE NEEDS."  
20 And then it goes on, as you were saying, "THE BASIC  
21 QUESTION THAT BEGS A RESPONSE IS HOW DO WE PROVIDE  
22 SMOKER SATISFACTION FROM A LOWER TAR BASE WITH  
23 SPECIFICALLY ENHANCED ACCEPTABILITY TRAITS, AND AT  
24 THE SAME TIME HELP OUR CONSUMER RATIONALIZE HIS  
25 DECISION TO SMOKE IN LIGHT OF INCREASING EXTERNAL

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1 PRESSURES."

2 Q. And, sir, isn't it a fact that after this  
3 conference the various B.A.T. Group companies did  
4 help the consumers rationalize their decisions to  
5 smoke in light of the increasing external pressures  
6 on them?

7 A. No. I mean, what -- what British-American  
8 Tobacco has done most clearly is -- is to cooperate  
9 with governments in -- in working towards products  
10 which the public health authorities may deem as being  
11 safer in some fashion. In the United Kingdom again I  
12 refer to a tremendous amount of interactive research  
13 that has gone on there and -- and with the view of --  
14 of the public health authorities saying, "Well, if  
15 you are to choose to smoke, smoke a -- a lower-tar  
16 product."

17 I have to say that it's a little disparate from  
18 the situation in the U.S. where at one stage that was  
19 certainly the case, but I believe the public health  
20 authorities' view are -- today is, "Whatever you do,  
21 do not smoke."

22 Q. Sir, it's your testimony that after this  
23 conference where people were brought from throughout  
24 the world to discuss how to help the consumer  
25 rationalize his decision that nothing was done to

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1 help that consumer do just that?

2 MR. SHEFFLER: Objection to the form of the  
3 question, mischaracterizes prior testimony, assumes  
4 facts not in evidence in this record.

5 MS. WIVELL: Well let me rephrase the  
6 question.

7 Q. Sir, it's your testimony that after this  
8 conference where people were brought together from  
9 throughout the world to discuss how to help the  
10 consumer rationalize his decision to smoke that  
11 nothing was done to that end?

12 MR. SHEFFLER: Same objection.

13 A. I mean, my response to that is that certainly,  
14 as -- as you've read it out in the opening remarks,  
15 there is -- there is some suggestion that was the  
16 case. What -- if you look at the -- the -- the  
17 schedule for the conference, you will see a whole  
18 series of -- of work and presentation which strikes  
19 me as trying to find some further understanding of --  
20 of -- understanding of -- of people who choose to  
21 smoke in terms of what was certainly then a push  
22 towards much lower-tar cigarettes.

23 That push has come from -- and certainly before  
24 1984 from the public health authorities. It was well  
25 before then that both in the United States and in the

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1 United Kingdom the public health authorities were  
2 suggesting that people, if they choose to smoke,  
3 should smoke lower-tar cigarettes.

4 Q. Well, sir, one of the things that was discussed  
5 at this conference was the pharmacological properties  
6 of nicotine; isn't that true?

7 A. I believe so. Let me see which --

8 Q. Could you turn --

9 A. -- presentation -- oh, you're going to tell me?

10 Q. Yeah.

11 A. Thanks.

12 Q. Could you turn to the page that ends with Bates  
13 number 59.

14 A. I got that.

15 Q. Sir, there is a -- an overhead entitled  
16 "NICOTINE : PHARMACOLOGICAL PROPERTIES"; correct?

17 A. Yeah, this seems to be one overhead in a -- in  
18 a -- a whole set of presentations, but there is one  
19 overhead here which says "NICOTINE" and goes on to  
20 say "PHARMACOLOGICAL PROPERTIES."

21 MS. WIVELL: I would like to take a break.

22 THE REPORTER: Off the record, please.

23 (Recess taken.)

24 BY MS. WIVELL:

25 Q. Sir, we were looking before we took our break at

1 what has been marked as Plaintiffs' Exhibit 604. Do  
2 you have it in front of you?  
3 A. Yes, I do.  
4 Q. Do you have the page open to that which ends  
5 with Bates number 59?  
6 A. Yes, I do.  
7 Q. And that is entitled "NICOTINE : PHARMACOLOGICAL  
8 PROPERTIES"; correct?  
9 A. Yes. It's one, I believe, of a set of  
10 overheads, which says "NICOTINE : PHARMACOLOGICAL  
11 PROPERTIES."  
12 Q. And these overheads, you understand, were  
13 utilized at this conference that we've been talking  
14 about; correct?  
15 A. I gather these were overheads that were -- were  
16 put up for -- for people to debate at this  
17 conference. Yeah, they were shown at the  
18 conference.  
19 Q. Now the second item that's listed there is  
20 "PULSED RESPONSE"; correct?  
21 A. It says "PULSED RESPONSE," yeah.  
22 Q. All right. Well now before we talk about that,  
23 let me ask you this: Inhaling cigarettes is an  
24 efficient way of absorbing nicotine, isn't it, sir?  
25 A. I mean, it's very clear from -- from research

1 from many, many years that as you inhale smoke and if  
2 that smoke is tobacco smoke, then you will -- you  
3 will get nicotine into the system, yeah.

4 Q. All right. And you would agree, sir, that the  
5 cigarette smoker has fingertip control of the amount  
6 of nicotine he takes or she takes into their mouth?

7 MR. SHEFFLER: Objection to the form of the  
8 question.

9 A. I'm not sure quite what was meant by "fingertip  
10 control." I think a smoker will certainly change the  
11 amount of smoke that goes into his or her mouth  
12 depending on how they have their smoking behavior,  
13 whether they inhale strongly, whether they inhale  
14 less strong, et cetera.

15 Q. Well, sir, you would agree that one of the  
16 likely reasons that people smoke is to dose  
17 themselves with -- with nicotine; right?

18 MR. SHEFFLER: Objection to the form of the  
19 question.

20 A. I mean, it's clear as you look through the  
21 research history it was identified very, very  
22 early -- in fact, I mean, I guess according to the --  
23 the U.S. Surgeon General's report of 1990 -- 1988,  
24 that in the 17th and 18th Centuries scientists were  
25 trying to determine that -- the chief active

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1 ingredient in tobacco, and it goes on to say it was a  
2 gentleman called Jean Nicot who id -- who identified  
3 nicotine in the first place and suggested that was  
4 the active substance.

5 It goes on to say that, I mean, "Since the late  
6 1800s, research on the pharmacologic actions of  
7 nicotine has contributed substantially to basic  
8 information about the nervous system," and it talks  
9 about the classic work by Langley and -- and  
10 Dickinson in 1889 "on nicotine's effects" on the  
11 "autonomic ganglia led to the postulates that"  
12 chemical -- "chemicals transmit information between  
13 neurons and that there are receptors on cells that  
14 respond functionally to stimulation by specific  
15 chemicals."

16 Yeah, I mean, the reason I read that out was  
17 that it's been clear within the scientific literature  
18 and even I guess, if we're talking 18th, 19th  
19 Century, very early scientific literature that  
20 nicotine has some response in terms of -- of having  
21 mild pharmacological properties in the brain.

22 Q. Now this reference to pulsed response that's  
23 here at the page that we have opened of Exhibit 603,  
24 that means that nicotine is pulsed from the lungs to  
25 the brain in about 7 seconds; isn't that right?

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1 MR. SHEFFLER: Objection. Objection to  
2 form, lack of foundation.

3 A. I'm not sure specifically what it means as --  
4 as -- as stated in this one page of this  
5 presentation. I mean, I think -- I mean, I could go  
6 back again to the Surgeon General's report. I mean,  
7 there clearly is an understanding that nicotine goes  
8 from its absorption into the lung to the brain in  
9 a -- in a fairly rapid manner.

10 (Plaintiffs' Exhibit 605 was marked  
11 for identification.)

12 THE WITNESS: Thanks.

13 BY MS. WIVELL:

14 Q. Sir, showing you what's been marked as  
15 Plaintiffs' Exhibit 605, this is a memo to Dr. C. I.  
16 Ayres and Dr. Thornton dated January 13th, 1976;  
17 correct?

18 A. I'm not sure whether it's to or whether one of  
19 them's wrote it. I mean, they're on different sides  
20 of the page. I don't know if that's the -- the  
21 persons it was sent to because it's typed "RET," so I  
22 would -- I would imagine that it was RET, Ray  
23 Thornton, --

24 Q. All right.

25 A. -- that authored it rather than was the person

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1 it was sent to. It certainly looks like it went to  
2 Dr. Ayres here.

3 Q. And this document's Bates numbered 105392319 as  
4 its beginning Bates number; correct?

5 A. Correct.

6 Q. And according to the note, enclosed was a  
7 document entitled "The Project in the 1980s"; right?

8 MR. SHEFFLER: I think it's "Product,"  
9 Counselor.

10 MS. WIVELL: I'm sorry, let me restate the  
11 question.

12 Q. And according to the first page of Exhibit 605,  
13 enclosed was a memo entitled, quote, "The Product in  
14 1980"; right?

15 A. What the first page says is "I enclose a note  
16 entitled," in -- in quotation marks, "'The Product in  
17 1980,'" end quotation marks, "which discusses,  
18 amongst other things, the role of biofeedback" --  
19 "the role of biofeedback versus cigarette smoking.

20 "Time has not permitted the complete  
21 development of all the ideas: this could be done at  
22 a later date, if required."

23 And then there's a scribble, which I -- I would  
24 assume is -- is Dr. Thornton's scribble, but I'm not  
25 certain.

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- 1 Q. And if we turn to the next page, we see that the  
2 title of the attachment is "THE PRODUCT IN 1980";  
3 correct?
- 4 A. Yep. It says "THE PRODUCT IN 1980."
- 5 Q. Now --
- 6 A. Sorry.
- 7 Q. -- sir, would you turn to the page that ends  
8 Bates number 323.
- 9 A. Yep.
- 10 Q. And there it says "Alternative tobacco products  
11 (to the cigarette)" as the heading of the first  
12 paragraph; right?
- 13 A. It says point "4. Rival Products." Then 4.1 is  
14 "Alternative tobacco products," within brackets, "(to  
15 the cigarette)," end brackets.
- 16 Q. Under that there is reference to work by  
17 Russell; correct?
- 18 A. Yeah.
- 19 Q. Now Russell was a BATCO consultant, wasn't he?
- 20 A. I'm not sure -- well, I mean, clearly Michael  
21 Russell was one person that we would listen to and --  
22 and -- and some work would have been done with --  
23 with Michael Russell, but in terms of a consultant, I  
24 mean, Michael Russell is one of those researchers  
25 that has, I mean, in the external literature written

1 a considerable amount on -- on matters related to  
2 nicotine.

3 Q. And what's referred to here is the pulsed  
4 transmission of nicotine-rich blood from the lungs to  
5 the brain in about 7 seconds; right?

6 A. Let me just see. Yeah, what it re -- what it  
7 refers to is -- is, I mean, it gives a reference  
8 where it says "'Comments on a Talk given by  
9 Dr. M.A.H. Russell'" in 1975, and it goes on to say  
10 "As pointed out by Russell," given that reference,  
11 "for many smokers the optimum method of  
12 administering nicotine appears to be by smoking," and  
13 it goes on to say "this being related to the pulsed  
14 transmission of nicotine-rich blood from the lungs to  
15 the brain" and then, in brackets, "(in about 7  
16 seconds)."

17 Q. Now, sir, it's true, isn't it, that that led to  
18 numerous stimulus-response reinforcements and -- and  
19 then to dependence on smoking?

20 MR. SHEFFLER: Objection.

21 A. I mean, what this document goes on to say -- and  
22 I assume it's still referring to the points made by  
23 Michael Russell -- that -- part of what Russell's  
24 presentation was says that "This leads to numerous  
25 stimulus-response reinforcements and hence dependence

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1 on smoking." I -- I know certainly that that would  
2 have been Michael Russell's view for many years.

3 Q. Sir, you would agree that nicotine is the key  
4 pharmacological component of cigarette smoke,  
5 wouldn't you?

6 A. I mean, as I -- I stated earlier, as identified  
7 by the United States Surgeon General in 1998, it  
8 was -- it was identified very early on that nicotine  
9 has mild pharmacological properties, and clearly in  
10 terms of tobacco smoke again that's what they found  
11 out in the 18th Century. It was -- was the -- the  
12 substance that people identified as -- as having  
13 those properties.

14 (Plaintiffs' Exhibit 606 was marked  
15 for identification.)

16 THE WITNESS: Thanks.

17 BY MS. WIVELL:

18 Q. Sir, showing you what's been marked as  
19 Plaintiffs' Exhibit 606, this is a document that  
20 begins with Bates number 109869437; correct?

21 A. Correct.

22 Q. And it's entitled "NOT FOR CIRCULATION, 12.9.84,  
23 R&D VIEWS ON POTENTIAL MARKETING OPPORTUNITIES";  
24 correct?

25 A. There's a handwritten note at the top of this

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1 document which says "NOT FOR CIRCULATION, 12.9.84,"  
2 but in terms of the -- the document, I don't know  
3 when that was applied to it and I don't know whether  
4 this is something which had been circulated or not.  
5 I don't see an author to this document.  
6 Q. Now the second -- I'm sorry.  
7 It lists high priorities on the first page;  
8 correct?  
9 A. It's -- it starts by saying "A. HIGH  
10 PRIORITY."  
11 Q. And the second of those high priorities is  
12 "Nicotine Deliveries"; right?  
13 A. It says point "2. Nicotine Deliveries."  
14 Q. And there it says "Nicotine is the key  
15 pharmacological component of cigarette smoke";  
16 right?  
17 A. That's correct.  
18 Q. Now, sir, isn't it true that nicotine is a  
19 powerful pharmacological agent?  
20 A. I mean, I think if you look at the scientific  
21 literature, what you would -- you would decide upon  
22 in terms of trying to define your term "powerful" is  
23 that nicotine is a mild -- has mild pharmacological  
24 activity, and in -- in many respects if you look at  
25 the science, it's comparable to the kind of mild

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1 pharmacological properties that caffeine has.

2 Q. Well, sir, isn't it true that it is a  
3 habit-forming alkaloid?

4 A. Nicotine has mild pharmacological properties,  
5 and it depends what you mean by "habit-forming."  
6 The -- smoking has been described through the years  
7 in many different ways. For example, the U.S.  
8 Surgeon General's report in 1964 described it as  
9 habituating. I think the term "habituating" has --  
10 has been described in many different ways.

11 In fact, even in this 1996 document I was  
12 referring to before from The -- from The Tobacco  
13 Products Research Trust, then there is a discussion  
14 in there suggesting that smoking is a habit, yes.

15 Q. Well, sir, the Surgeon General of the United  
16 States went on in later reports to describe nicotine  
17 as addictive, didn't it?

18 A. That's absolutely correct. The 1988 report that  
19 I was talking to you before describes nicotine as --  
20 as an addiction -- or smoking as an addiction and  
21 nicotine as being addictive.

22 Q. Sir, isn't it a fact that the presence of  
23 nicotine in -- in a cigarette is the primary reason  
24 that smokers seek psychological satisfaction from  
25 smoking?

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1                   MR. SHEFFLER:  Objection to the form,  
2  ambiguous and vague.

3  A.    I don't know what you mean by "psychological  
4  satisfaction."  What I can tell you is that, I mean,  
5  generally what science believes is that -- that  
6  smoking is a -- a complex behavior which is  
7  interacted by -- by all sorts of things, including  
8  social matters.  What is clear is that nicotine does  
9  have mild pharmacological properties, and what the  
10 science seems to suggest, that it helps or it's --  
11 it's the substance in tobacco smoke which is re -- as  
12 reported by smokers helps people reduce stress and on  
13 some occasions helps people concentrate.

14           But I mean, generally -- and I think again -- I  
15 mean, I could quote you out of -- of The -- The  
16 Tobacco Products Research Trust and -- review by Sir  
17 Peter Froggatt.  It's clear that nicotine is by no  
18 means the only reason that people choose to smoke.

19 Q.    Well, sir, it's the main reason that people  
20 choose to smoke; isn't that true?

21 A.    I mean --

22           MR. SHEFFLER:  Objection, overbroad.  Go  
23 ahead.

24 A.    I mean, in my view, I don't know how you define  
25 "main," but it's clearly by no means the only

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1 reason. It is also certain that nicotine provides  
2 some benefits for smokers. I would imagine that's  
3 certainly been described broadly in the scientific  
4 literature.

5 Q. Well you understand that herbal cigarettes have  
6 been offered for sale which do not include nicotine;  
7 right?

8 A. I believe that there are herbal cigarettes on  
9 sale in various parts of the world. I would imagine  
10 they do not contain nicotine if they don't contain  
11 the -- the tobacco plant. My -- my guess is they  
12 taste quite different from a -- a tobacco cigarette.  
13 I must admit I've never tried a herbal cigarette.

14 Q. And isn't a fact that herbal cigarettes are  
15 wildly unsuccessful because they don't contain  
16 nicotine?

17 MR. SHEFFLER: Objection to the --  
18 objection to the form of the question.

19 A. I mean, you can say that anything is wildly  
20 unsuccessful because it doesn't contain nicotine,  
21 but, I mean, in terms of herbal cigarettes, my -- my  
22 assumption would be, is that they're -- they're quite  
23 a different product and they taste quite  
24 differently.

25 Q. Well isn't it a fact that herbal cigarettes are

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1 not successful because they don't contain the  
2 required dose of nicotine that a smoker expects when  
3 he or she takes a puff?

4 MR. SHEFFLER: Objection, asked and  
5 answered.

6 A. Again, I mean, the -- the answer is, I mean, you  
7 could say that of -- of -- of anything, I mean, in  
8 terms of whether it has nicotine or not. My  
9 assumption is that -- that herbal cigarettes don't  
10 taste awful -- awfully good, but, I mean, as I said,  
11 I don't have any personal knowledge. I haven't tried  
12 a herbal cigarette.

13 MS. WIVELL: Mr. LaBorde, could you get out  
14 Exhibit 544, please.

15 (Plaintiffs' Exhibit 544 was handed  
16 to the witness.)

17 THE WITNESS: Thanks.

18 BY MS. WIVELL:

19 Q. Sir, showing you what's been previously marked  
20 as Exhibit 544, this is a document entitled  
21 "'Non-combustible aerosol generator'"; correct?

22 A. Yeah, it says in a lighter typeface than the  
23 rest of the document "'Non-combustible aerosol  
24 generator'" in quotation marks.

25 Q. The second paragraph of this document begins by

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1 saying "We currently sell cigarettes which the  
2 consumer uses to produce smoke for his or her  
3 satisfaction"; right?

4 A. That's what it says.

5 Q. And it goes on to say "This satisfaction derives  
6 in part from the presence of nicotine, and in part  
7 from the other flavour components of smoke"; right?

8 A. That's correct.

9 Q. It goes on to talk about experience with  
10 non-nicotine cigarettes, such as herbal cigarettes;  
11 correct?

12 A. Yep, it says the experience -- oh, it says  
13 "Experience with non-nicotine cigarettes - such as  
14 herbal devices," whatever that means, "suggests that  
15 the presence of smoke aerosol alone is not  
16 acceptable, and that nicotine is certainly  
17 required."

18 In terms of what I would assume this refers to  
19 is -- is at least in part the taste characteristics  
20 imparted by nicotine.

21 Q. Sir, have you read the testimony of Colin Greig,  
22 who authored this document?

23 A. No, I have not.

24 Q. Has anyone shared with you what he said about  
25 this document?

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1 A. No, they have not.

2 Q. All right. Sir, isn't it a fact you could make

3 a cigarette out of lettuce and no one would smoke

4 it?

5 A. I don't know what -- what lettuce tastes like

6 when you -- when you cure it and chop it up and --

7 and put it in a piece of paper and set fire to it.

8 As far as I know, no one has -- has made a cigarette

9 with lettuce, but, I mean, I don't know whether

10 someone may in the future.

11 Q. Well isn't it a fact that if you chop up

12 nicotine and just put it in a cigarette and light it,

13 it tastes like foul, rotten rubber?

14 A. I mean, I don't know how you would chop up

15 nicotine. Nicotine's a liquid --

16 Q. I'm sorry.

17 A. -- at room temperature.

18 Q. Let me rephrase the question.

19 Sir, isn't it a fact that if you chopped up

20 tobacco and put it in a cigarette and lit it without

21 any flavorings, it would taste like foul, rotten

22 rubber?

23 A. No. I mean, the majority -- well I don't know

24 whether it's the majority, but certainly enormous

25 amounts of -- of -- of the world use what is called

1 flue-cured or Virginia-type cigarettes. Those  
2 cigarettes are typically just tobacco in them.  
3 There's very little added to them in terms of  
4 flavorants. And I mean, for example, in China the  
5 predominant cigarette that is sold in China are that  
6 type, very few flavorants now. I assume that -- I  
7 don't know how many people there are in China who  
8 choose to smoke, but I assume they all don't think  
9 that it, as you described, tastes like whatever it  
10 was.

11 Q. Well, sir, these flue-cured tobacco cigarettes  
12 that you're talking about do have flavorants, don't  
13 they?

14 A. Actually very little if you're talking about  
15 adding flavor specifically to tobacco. No, I mean,  
16 their -- their characteristics tend to be that  
17 they're very much tobacco. I mean, it varies. I  
18 mean, it depends. It's a very different type of --  
19 of -- of tobacco, but the characteristic of the taste  
20 that's imparted isn't like it is in the United States  
21 where -- where various flavors are -- are added.

22 Q. Well, sir, the B.A.T. Group attempted to design  
23 a nicotine-producing product that did not have  
24 tobacco called Project ARIEL; correct?

25 A. That's correct. There was a -- a prototype --

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1 well there was a project called ARIEL which developed  
2 a variety of different prototypes, some of which  
3 contained tobacco, one of which was -- was pretty  
4 much tar free and just contained a nicotine aerosol.

5 Q. And isn't it a fact that it also did not contain  
6 flavorants?

7 A. I believe it didn't add flavorants in at least  
8 the -- the nicotine aerosol version. I'm not sure  
9 about the other version, whether there would have  
10 been some sort of flavorants.

11 Q. And isn't it a fact that the taste was  
12 unacceptable for the product that did not contain  
13 tobacco but did contain nicotine?

14 A. I gather that was the case. That doesn't  
15 surprise me in the slightest. You have to understand  
16 in terms of taste what -- what -- what nicotine  
17 imparts in terms of taste is something called impact,  
18 which is the catch that smokers get at the back of  
19 the throat when they inhale a cigarette, and that's  
20 very much part of -- of what a smoker takes when  
21 he's -- he's -- he's choosing to smoke a cigarette.  
22 It's very much part of the characteristics.

23 It does not surprise me in the slightest if you  
24 were to take that general balance of smoke away that  
25 people wouldn't accept it, and I think it was very

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1 clearly demonstrated by the R.J. Reynolds product  
2 called Premier, which was I guess something somewhat  
3 similar to the work that we were doing in -- in the  
4 '60s, released much, much later and didn't gain  
5 consumer acceptance at all.

6 Q. Sir, isn't it a fact that the presence of  
7 nicotine in smoking material is essential for it to  
8 be acceptable to smokers?

9 MR. SHEFFLER: Objection.

10 A. I mean, I'm not certain. I mean, clearly  
11 what -- if you look at the way trends of -- of -- of  
12 consumption have gone and the kind of products that  
13 people have chosen to smoke over the past maybe 20  
14 years and certainly perhaps accelerating today,  
15 you'll -- you'll note that the amount of nicotine  
16 yields in cigarettes has dramatically reduced to the  
17 extent that, I mean, some cigarettes that are  
18 successful on the market today have -- have tar  
19 levels down at as low as 1 milligram and nicotine  
20 levels as low as .1, which is certainly tremendously  
21 lower than -- than any products that would have been  
22 available, for example, in the 1950s.

23 (Plaintiffs' Exhibit 607 was marked  
24 for identification.)

25 THE WITNESS: Thanks.

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1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as  
3 Plaintiffs' Exhibit 607, this is a document that  
4 begins with Bates number 107605012; correct?

5 A. Yes, correct.

6 Q. And it's entitled "PATENTS ACT 1949-'61, PATENTS  
7 FORM NUMBER 3, COMPLETE SPECIFICATION, 'Improvements  
8 relating to smoking materials'; correct?

9 A. That's correct.

10 Q. And it's a declaration by British-American  
11 Tobacco Company concerning a -- an invention they  
12 would like to have patented; right?

13 A. Yeah. I'm not very familiar with patent law,  
14 but it -- it says "WE, BRITISH-AMERICAN TOBACCO  
15 COMPANY LIMITED ...." It gives the address and talks  
16 about where the -- the company's incorporated. "...  
17 do hereby declare the invention for which we pray  
18 that a patent may be granted to us and the method by  
19 which it is to be performed, to" a "particularly  
20 described" -- "to be particularly described in and by  
21 the following statement."

22 Q. And then the following statement, if we look at  
23 the next page, in the second paragraph says "At the  
24 present time the presence of nicotine in a smoking  
25 material is essential for it to be acceptable to

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1 smokers"; correct?

2 A. That's correct.

3 Q. And it goes on to say "Some smoking compositions  
4 containing little or no tobacco are deficient in  
5 nicotine or contain no nicotine"; right?

6 A. That's what it says.

7 Q. And it talks about the deficiency being made up  
8 by adding tobacco extract or nicotine salt to the  
9 smoking material; right?

10 A. It says "This deficiency is usually made up,"  
11 yeah.

12 Q. All right. Now isn't it a fact that nicotine is  
13 the most pharmacologically active constituent in  
14 tobacco smoke?

15 MR. SHEFFLER: Objection. The question was  
16 asked and answered.

17 A. Yeah, I mean, again I'll answer that I believe  
18 that nicotine is -- has mild pharmacological  
19 properties very similar to caffeine. If you look at  
20 the scientific literature of the substances that were  
21 found in tobacco smoke, I think it's the key one as  
22 identified by the U.S. Surgeon General and looking  
23 back by -- from research in the 18th, 19th Century.

24 Q. And isn't it a fact that nicotine is the most --  
25 I'm sorry, strike that.

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1           Isn't it a fact that nicotine is the factor  
2 responsible for maintaining the smoking habit in most  
3 smokers?

4   A.    I mean, I don't believe that is the case.  As I  
5 said before and -- and -- and as is -- is talked  
6 about, for example, again in -- in -- by Sir Peter  
7 Froggatt in The Tobacco Products Research Trust, I  
8 mean, I think it's the common view of -- of many  
9 people that -- that smoking is -- is -- sorry, is --  
10 nicotine is one part of -- of -- of the reason why  
11 people smoke, by -- by no means the main -- I don't  
12 know about the main reason, but it's certainly by no  
13 means the -- the sole reason why people would choose  
14 to smoke.

15           MS. WIVELL:  Can we take our lunch break?

16           MR. SHEFFLER:  Well it's --

17           MS. WIVELL:  What time is it?

18           MR. SHEFFLER:  It's 12 o'clock.  You know,  
19 if you --

20           MS. WIVELL:  Okay.  I would like to do  
21 that.

22           THE REPORTER:  Off the record, please.

23           (Luncheon recess taken at 12:01 o'clock  
24 p.m.)

25

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:29 o'clock  
3 p.m.)

4 (Plaintiffs' Exhibit 608 was marked  
5 for identification.)

6 BY MS. WIVELL:

7 Q. Sir, showing you what's been marked as  
8 Plaintiffs' Exhibit 608, this is a document entitled  
9 "HUMAN SMOKING BEHAVIOUR" that begins with Bates  
10 number 102226308; right?

11 A. That's correct.

12 Q. All right. Would you turn to the page that's  
13 Bates number ends with 312.

14 A. Yeah.

15 MR. SHEFFLER: Could we have an  
16 identification of the author or date of this  
17 exhibit?

18 MS. WIVELL: I have identified it with the  
19 information I have available, and I have also  
20 identified it with the information from the  
21 solicitor's index that we were provided by B.A.T.

22 MR. SHEFFLER: Okay. Is -- was there any  
23 indication that this was the last page because  
24 there's -- it seems to -- it seems to not have a -- a  
25 page which would be normal in these reports with the

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1 author and date, but is there any indication that  
2 this is an incomplete document, or do you know,  
3 Counsel?

4 MS. WIVELL: I don't know.

5 BY MS. WIVELL:

6 Q. Sir, if you turn to the page Bates number ends  
7 with 312, the last paragraph begins "Nicotine is the  
8 most pharmacologically active constituent in"  
9 cigarette "smoke and is probably the most usual  
10 factor responsible for the maintenance of the smoking  
11 habit"; correct?

12 A. And it says "tobacco smoke" rather than  
13 "cigarette smoke," but --

14 Q. All right.

15 A. -- other than that, you read it correctly.

16 Q. All right. Sir, and you understand that  
17 nicotine is the constituent in tobacco smoke which is  
18 most responsible for the maintenance of the smoking  
19 habit; isn't that true?

20 MR. SHEFFLER: Objection. I believe this  
21 was asked and answered.

22 A. No, I understand that nicotine does have mild  
23 pharmacological properties and -- and I do believe,  
24 as I think the open science literature believes, that  
25 nicotine plays some role in terms of what -- in terms

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1 of people smoking, but by no means does it play the  
2 only role -- role. And it says here it is probably  
3 the most usual factor responsible for the maintenance  
4 of the smoking habit. I don't know what that means.

5 I think in terms of smoking behavior, what is  
6 clear is issues like taste of -- of a cigarette smoke  
7 and also various social factors are involved in -- in  
8 whether someone decides to continue to smoke or not.

9 (Plaintiffs' Exhibit 609 was marked  
10 for identification.)

11 THE WITNESS: Thanks.

12 BY MS. WIVELL:

13 Q. Sir, showing you what's been marked as  
14 Plaintiffs' Exhibit 609, this is a document that  
15 begins with Bates number 401854052; correct?

16 A. Correct.

17 Q. And it's entitled "THE FOUNDATION FOR PRODUCT  
18 INNOVATION IN CONSUMER MOTIVATION"; right?

19 A. And that is correct.

20 Q. Now, sir, if we turn to the page that ends with  
21 Bates number 054, there is a discussion of theories  
22 of smoking maintenance; correct?

23 A. I'd need to read it.

24 Q. Do you see the paragraph that begins with  
25 "Theories of smoking maintenance all agree on at

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1 least one point - that nicotine is central to the  
2 habit and that the extinction of active smoking  
3 following nicotine withdrawal is the" -- "is the  
4 evidence supporting this view"?

5 A. I mean, I see that written in this document,  
6 yes, as the first sentence of the first complete  
7 paragraph on page three.

8 Q. Now, sir, it goes on to talk about a optimum  
9 requirement for nicotine; correct?

10 A. That's what it says in the second sentence of  
11 that paragraph.

12 Q. And isn't it a fact that it is well known  
13 throughout the B.A.T. Group companies that there is a  
14 specific minimum requirement of nicotine that is  
15 required by most smokers?

16 MR. FRANKEL: Can, just for clarity of the  
17 record's sake, we just agree when you say "B.A.T.  
18 Group companies," "B.A.T. Group," you're referring to  
19 the tobacco operating subsidiaries of B.A.T.  
20 Industries?

21 MS. WIVELL: Yes.

22 A. Sorry, could you repeat the question.

23 Q. Certainly.

24 MR. SHEFFLER: And when you've had -- when  
25 you've used that term previously, that's what you've

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1 been referring to; is that correct, Counsel?

2 MS. WIVELL: That's -- considering that I'm  
3 not going back and my deposition's not being taken,  
4 I'll put that into my question now.

5 BY MS. WIVELL:

6 Q. Isn't it a fact that it is well known throughout  
7 the B.A.T. Group tobacco companies that there is a  
8 specific minimum requirement of nicotine that is  
9 required by smokers?

10 A. Yeah, and in terms of defining the  
11 British-American Tobacco or, as you say, B.A.T.  
12 Group, my understanding is that you're talking about  
13 the British-American Tobacco group of companies that  
14 are involved in -- in tobacco. So it is like the  
15 companies such as British-American Tobacco Company.  
16 It doesn't refer to B.A.T. Industries.

17 In terms of -- of answering your question, I  
18 think no, and -- and even this document that you've  
19 just shown me goes on to -- to talk about "More  
20 recent UK behavioural studies indicate that absolute  
21 nicotine delivery may, however, be misleading and  
22 that tar-to-nicotine ratio is more likely to be the  
23 criterion shaping adjustments in smoking behaviour."  
24 And I think what that means and I think there's a  
25 broad understanding within British-American Tobacco

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1 that -- that what is a key fundamental in -- in terms  
2 of whether a cigarette will be acceptable to someone  
3 who chooses to smoke is -- is the taste, and the  
4 taste is -- is most -- most determined by -- by the  
5 tar in the cigarette.

6 Q. Well, sir, isn't it a fact that this document  
7 goes on to talk about nicotine being a very powerful  
8 unconditional re -- reinforcer or reward?

9 MR. SHEFFLER: Objection, lack of  
10 foundation. Also object, if you're going to ask what  
11 the document as a whole talks about, I think it would  
12 be only fair to let the witness read the document.  
13 If you want to refer him to a specific sentence, read  
14 it to him and ask him what it means, that's fine, but  
15 if you're talking about the entire document, then  
16 he's going to have to read it.

17 A. I mean, one part of -- and -- and I really do  
18 need to read the whole document to give you a -- a  
19 proper view. I can obviously answer you in terms of  
20 what British-American Tobacco has done for many years  
21 or its understanding of the role of -- of -- of  
22 nicotine as compared to the role of taste in terms  
23 of -- of cigarettes.

24 But in -- in this paragraph it starts off with  
25 "This centrality of nicotine is rather paradoxical in

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1 the sense that it does" have not "particularly  
2 pronounced attributes" to "itself, apart from sensory  
3 impact ...." And I think, I mean, what this is  
4 referring to is that -- I mean, clearly is seeking --  
5 and I don't know when exactly the document was  
6 produced because there's no date on it -- seeking  
7 a -- trying to understand more fully again, as the --  
8 as the scientific literature has tried to do for many  
9 years externally, and what the role of nicotine is  
10 and -- and what smoking behavior is all about.

11 Q. Well, sir, are you denying that nicotine is a  
12 reinforcer which provides a reward which smokers  
13 quickly associate with other stimuli occurring at the  
14 same time that nicotine is administered?

15 MR. SHEFFLER: Object to the form of the  
16 question to the extent that the predicate to the  
17 question mischaracterizes the witness's testimony.

18 A. I mean, the sentence you referred me to says  
19 "Smoking fits the conditioned learning model ...,"  
20 whatever that model is. In terms of what actually  
21 happens and my understanding of -- of the scientific  
22 literature in relation to smoking behavior, the  
23 scientific literature that certainly British-American  
24 Tobacco has contributed to, is that it's a variety  
25 of -- of factors that influences people's decision

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1 to -- to continue to smoke. And in terms of, I mean,  
2 smoking, one of the key things that -- that con --  
3 not -- that makes a person decide to smoke a  
4 particular product -- product I believe is the  
5 taste. If that were not to be the -- the case, if it  
6 were to be nicotine, then it's -- it's entirely  
7 incomprehensible why there have been this dramatic  
8 trend toward much, much lower nicotine deliveries  
9 in -- in the products that are bought today in -- in  
10 many countries in the world, including the United  
11 States and the United Kingdom.

12 Q. Well, sir, at least this BATCO document says  
13 "Smoking fits the conditioned learning model very  
14 well in the sense that nicotine is a very powerful  
15 unconditional reinforcer or," quote, "'reward,'"  
16 quote, "which very quickly associates 'reward,'" in  
17 quotes, "with other stimuli occurring at the same  
18 time as the nicotine is administered"; correct?

19 MR. SHEFFLER: I object to the form of that  
20 question. There's been no foundation laid that this  
21 document is a BATCO document if that means that this  
22 document was authored by a researcher at BATCO.

23 A. I mean, you've -- you've read again part -- out  
24 one part of this document. I don't know when it was  
25 written. I don't even know -- I'm not even certain

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1 who it was written by.

2       What I -- what I can say yet again is -- is that  
3 in terms of smoking behavior, an area of research  
4 that is -- is -- there is a substantial body of  
5 research on in the external literature, the reasons  
6 why people choose to smoke and why they choose to --  
7 to smoke any particular product are complex, but  
8 certainly in terms of consumers' choice of a  
9 particular product, that seems to be dominated by  
10 taste, and that --

11 Q.   Well, sir --

12 A.   Sorry. And that taste seems to be dominated by  
13 the amount of tar that's in the cigarette smoke.

14 Q.   Sir, isn't it a fact that a person who takes a  
15 puff of cigarette gets a dose of nicotine roughly  
16 equivalent to an injection of between 1 and 2 microns  
17 per kilogram of nicotine?

18               MR. SHEFFLER: Objection to the form,  
19 but --

20 A.   I mean, a micron is a measure of -- of  
21 distance. If you mean micrograms, I'm not sure --

22 Q.   Oh, perhaps.

23 A.   I mean, clearly if someone smokes and takes a  
24 puff on a cigarette, they will obtain some nicotine.  
25 That's -- that's clearly what has been evidenced in

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1 the scientific literature for many, many years.

2 (Plaintiffs' Exhibit 610 was marked  
3 for identification.)

4 BY MS. WIVELL:

5 Q. Sir, showing you what's been marked as  
6 Plaintiffs' Exhibit 610, this is a document entitled  
7 "CONFIDENTIAL, TOBACCO RESEARCH COUNCIL  
8 LABORATORIES, HARROGATE, PROGRESS REPORT, OCTOBER  
9 1967"; right?

10 A. That's correct. It's Harrogate, but yes, that's  
11 correct.

12 Q. And the Bates number is 105396874 as the first  
13 Bates number; correct?

14 A. That's correct.

15 Q. Could you turn to the section on pharmacology,  
16 which is at the top of the page that ends with Bates  
17 number 890.

18 A. I've got that now.

19 Q. Now, sir, it says there "Inhalation of tobacco  
20 smoke has been shown to be an extremely efficient way  
21 of absorbing nicotine and it has been calculated that  
22 every time a smoker inhales a puff of tobacco smoke  
23 he gets a dose of nicotine roughly the same as he  
24 would get if he" were "given an injection of between  
25 1 and 2 micrograms per kilogram of nicotine directly

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1 into a vein"; right?

2 A. That's what it says here, yes.

3 Q. All right. And you understand that that is the  
4 dose which a smoker was inhaling at that time with  
5 cigarettes that were available in 1967?

6 MR. SHEFFLER: Objection to the form.

7 A. I mean, I'm not sure. It's -- this is dated  
8 October 1967, and, I mean, cigarettes in those days I  
9 guess would contain something of the order of about 1  
10 milligram per cigarette in terms of -- 1 -- somewhere  
11 between 1 and 2, sorry, more likely to be closer to 2  
12 milligrams per -- per cigarette in terms of their --  
13 their yield. Obviously it will be -- depend on -- on  
14 the weight of the person because you're equating this  
15 in terms of kilograms.

16 Whether that's a figure about right, I'm not  
17 sure. It probably is.

18 Q. It goes on to say "It is worth noting that  
19 someone smoking a cigarette has literally" -- "has"  
20 literal -- I'm sorry, strike that.

21 MR. SHEFFLER: "Has literally."

22 THE WITNESS: Uh-huh.

23 Q. It goes on to say "It is worth noting that  
24 someone smoking a cigarette has literally finger tip  
25 control of how much nicotine he takes into his mouth;

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1 by reducing the puff volumes or inhaling less  
2 frequently he absorbs less nicotine"; right?

3 A. That's what it says here.

4 Q. And you would agree, sir, that conversely, if a  
5 person took bigger puffs or inhaled more frequently,  
6 he or she would absorb more nicotine per puff?

7 A. I mean, I think in terms of all of the smoke  
8 that you may get out of a cigarette, if you -- you  
9 puff more, you will get more tar and you will get  
10 more nicotine. You may get more carbon monoxide and  
11 any other constituents of tobacco smoke.

12 And if you puff less or take a -- a smaller puff  
13 volume, again you would get less tar and less of the  
14 other constituents, yes.

15 Q. All right. Including nicotine; right?

16 A. I would imagine including nicotine and all the  
17 other constituents such as tar.

18 Q. Now, sir, it goes on to say that "It is ...  
19 likely that some people smoke in order to dose  
20 themselves with some nicotine and the particular  
21 concern of the Pharmacology Department has been to  
22 find out what these small amounts of nicotine can do  
23 to a smoker"; correct?

24 A. That's what it says here, yes.

25 Q. Well, sir, isn't it true that the B.A.T. Group

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1 learned that small amounts of nicotine can addict  
2 smokers?

3 MR. SHEFFLER: Objection to the form of the  
4 question, assumption of the word -- assumption not  
5 stems from the evidence.

6 A. The answer is no, it is -- is my understanding  
7 of the scientific literature that if you mean by  
8 "addiction" -- and that term has been defined in all  
9 sorts of different ways in the scientific  
10 literature. If you mean by "addiction" does --  
11 nicotine in some way stops people from being able to  
12 choose to -- to stop smoking, the answer is no. It's  
13 very clear that people do stop smoking of their own  
14 free will, and I can't see anything within the  
15 scientific literature which would suggest that  
16 nicotine would stop that happening.

17 Q. Well, sir, you're aware of the Surgeon General's  
18 opinion concerning nicotine and its addictiveness,  
19 aren't you?

20 MR. SHEFFLER: Objection. Which Surgeon  
21 General?

22 A. I'm aware of two Surgeon General's opinions.  
23 Certainly in -- in the Surgeon General's first report  
24 in 1964, which is entitled "SMOKING and HEALTH,  
25 REPORT OF THE ADVISORY COMMITTEE TO THE SURGEON

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1 GENERAL OF THE PUBLIC HEALTH SERVICE," it was the  
2 determination of the Surgeon General that you  
3 couldn't compare smoking with -- with addictive --  
4 the taking of an addictive substance such as heroin  
5 or cocaine.

6 I'm aware that the Surgeon General issued a  
7 report in -- in 1988 where he talks about a different  
8 definition in terms of addiction and certainly points  
9 out on page iv of the preface that various org --  
10 "Standard definitions of drug addiction have been  
11 adopted by various organizations including the World  
12 Health Organization and the American Psychiatric  
13 Association. Although these definitions are not  
14 identical, they have" some "common several criteria  
15 for establishing a drug as addicting," and he goes on  
16 to say that "The central element among all forms of  
17 drug addiction is that the" user -- "user's behavior  
18 is largely controlled by a psychoactive substance  
19 (i.e., a substance that produces transient  
20 alterations in mood that are primarily mediated by  
21 effects in the brain)." It goes on "There is often  
22 compulsive use of the drug despite damage to the  
23 individual or to society, and drug-seeking behavior"  
24 that "can take precedence over other" -- "other  
25 important priorities."

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1           And -- and that is really the central part of  
2   the definition that is being used by the United  
3   States Surgeon General in 1998, and in my opinion,  
4   that broad definition to try and classify something  
5   as -- as addictive can bring in many, many types of  
6   substances. For example, coffee would certainly  
7   apply to that and so would chocolate, and I don't see  
8   anything within smoking that would really go to this  
9   last -- last point of it taking precedence over other  
10  important priorities.

11 Q.   But it's clear, isn't it, sir, that the second  
12 attorney -- or the second Surgeon General's report  
13 that you're referring to concludes that smoking is  
14 addictive? Right?

15 A.   I mean, the Surgeon General report of -- of  
16 1998 -- and it's one of -- of a series starting from  
17 '64 --

18 Q.   Do you mean 1988, sir?

19 A.   Oh, I'm sorry. Did I misspeak?

20 Q.   Yes.

21 A.   Yes, I meant 1988. And I'm not sure which  
22 number it is, certainly not the second one. It -- it  
23 must be the eighth or ninth of the Surgeon General's  
24 reports. Concludes in its view, based on the -- on  
25 the -- the definitions that it adopts, that smoking

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1 is -- is an addiction, yes.

2 Q. All right. And, sir, isn't it true that the  
3 first Surgeon General's report that you referred to  
4 didn't have the benefit of the smoking research that  
5 the B.A.T. Group had done on its behalf prior to the  
6 time that report was written?

7 MR. SHEFFLER: Objection to the form.

8 Objection --

9 MS. WIVELL: Let me rephrase the question.

10 Q. Isn't it true that the first Surgeon General's  
11 report which you referred to did not have the benefit  
12 of the smoking research on the issue of addiction  
13 that the B.A.T. Group had done on its behalf before  
14 that report was written?

15 MR. SHEFFLER: Objection to the form,  
16 assumes facts not in evidence.

17 A. Again I'm assuming by -- by "B.A.T. Group" you  
18 mean the British-American Tobacco companies involved  
19 in the tobacco business, not B.A.T. Industries.

20 In terms of, I mean, the science that the  
21 Surgeon General looked at, I mean, it was clearly a  
22 broad range of science, and -- and his views, I  
23 think, were taken very much in trying to make a  
24 comparison with what he clearly saw as -- as  
25 addictive substances, such as heroin, compared to --

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1 to substances like drinking coffee, as he says, or --  
2 or smoking cigarettes. There has clearly been some  
3 confusion over the term, and -- and, for example, in  
4 1962 the Royal College of -- of Physicians of London  
5 and in their "Summary and Report on Smoking in  
6 relation to Cancer of the Lung and Other Diseases"  
7 talk about smoking or "Smokers may be addicted to  
8 nicotine" on their page S6.

9 I think the Surgeon General was -- I mean, had  
10 as much information as was available from the general  
11 scientific community that was of relevance when he  
12 made his decision to -- to separate smoking from an  
13 addictive substance such as heroin.

14 Q. Move to strike as nonresponsive. Let me  
15 rephrase it so it will be a little easier for you.

16 Sir, --

17 MR. SHEFFLER: Objection to statements.

18 Q. -- the B.A.T. Group tobacco companies did not  
19 share the results of Project HIPPO or Project MAN --  
20 MADHATTER with the Attorney General before the first  
21 Attorney General's report on smoking was written;  
22 isn't that true, sir?

23 MR. SHEFFLER: Objection to the form.

24 A. I mean, as far as I know, British-American  
25 Tobacco did not share specifically the research that

1 was undertaken by an external company called Battelle  
2 which is termed Project HIPPO. That's hardly  
3 surprising.

4 If you look at the reviews by -- by scientists  
5 that actually were from this laboratory that you  
6 just -- in the document just now that you referred me  
7 to, that the laboratory at Harrogate, whose research  
8 was certainly reported in the open literature -- it  
9 was very much a -- a matter of public record -- the  
10 researchers at that establishment said that the --  
11 that the data from Project HIPPO really had -- wasn't  
12 very good and it really had little relevance.

13 Q. Well you are aware, sir, aren't you, that Sir  
14 Charles Ellis has interpreted that data to, among  
15 other things, conclude that it demonstrated that  
16 nicotine was addictive? Isn't that true, sir?

17 MR. SHEFFLER: Objection.

18 A. I mean, to -- to make sure that I speak  
19 accurately, maybe I can see that document. I thought  
20 he referred to something like a habit of addiction,  
21 which is also, I mean, a matter of confusing the  
22 term. And as you can see from what the -- the Royal  
23 College of Physicians was saying in -- in -- in 1962,  
24 at one stage they say smokers may be addictive and  
25 later on in their report they talk about

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1 habituation.

2       So the term is somewhat confused, and I would  
3 imagine that Sir Charles didn't really -- Sir Charles  
4 Ellis didn't really identify what he meant by that  
5 term.

6 Q.   Well, sir, you are aware that Sir Charles Ellis  
7 has said, quote -- I'm sorry, strike that.

8       You are aware that after receiving the results  
9 of Project HIPPO and Project MADHATTER, Sir Charles  
10 Ellis said, and I quote, "Smoking demonstrably is a  
11 habit based on a combination of psychological and  
12 physiological pleasure and also has strong  
13 indications of being an addiction"? You're aware of  
14 that, sir, aren't you?

15               MR. SHEFFLER: Object to the form.

16 A.   My -- that's my understanding that's one of the  
17 things that -- that he has said, and -- and there  
18 again he -- he refers to -- to smoking as a habit and  
19 there clearly has been some confusion over what the  
20 various terms mean. If you look at both research,  
21 scientific and -- and also basic common sense in  
22 terms of looking at the way people smoke and the way  
23 people are able to quit again as the U.S. Surgeon  
24 General refers to the -- the fact that nearly half of  
25 all smokers have quit smoking, 90 percent of them

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1 having quit without any sort of specialized help at  
2 all, it seems to me that you wouldn't define smoking  
3 certainly in the same terms as you would define a  
4 substance like heroin.

5 Q. Well, sir, you referred to 90 percent of these  
6 smokers having been able to quit without any sort of  
7 specialized help at all. How many of those people  
8 returned to smoking?

9 A. In terms of the quote from the Surgeon General,  
10 I'd have to -- to -- to look it up and I'm not sure  
11 whether I've got the right report here. I thought  
12 that the general view of the Surgeon General there  
13 was that not that many -- I mean, that these were  
14 people who were smokers who had become ex-smokers,  
15 and that's long-term ex-smokers in terms of the quote  
16 he was giving.

17 Q. Well is he --

18 A. I think he was looking at those people who  
19 had -- who had stopped smoking and who had not  
20 returned to smoking.

21 Q. Sir, you're a smoker, aren't you?

22 A. Yes, I smoke.

23 Q. Have you ever tried to give it up?

24 MR. SHEFFLER: Objection.

25 A. I don't know what the term "try" means. I've --

1 I've -- I've never stopped smoking. Well I started  
2 smoking at age about 24, and since that time up to  
3 the present I haven't stopped smoking.

4 Q. Have you ever tried to quit smoking?

5 A. Again I --

6 MR. SHEFFLER: Objection to the form.

7 A. -- I don't think the term "try" is -- is one  
8 that I fully understand. If I'd made a decision that  
9 I was going to stop smoking, I think I could stop  
10 smoking. It wouldn't be a matter of me trying. I  
11 think I would just do it.

12 Q. Have you ever made the decision not to quit --  
13 or to continue smoking? Strike that.

14 Have you ever made the decision to stop  
15 smoking?

16 MR. SHEFFLER: Objection, asked and  
17 answered.

18 A. The answer is no, I have not made the decision  
19 since age 24 that I will stop smoking.

20 Q. Sir, has it ever -- strike that.

21 Has any physician ever told you to stop  
22 smoking?

23 A. I had doctors suggest to me that I should -- I  
24 should cut down smoking and stop smoking, yes.

25 Q. And you did not follow your physicians'

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1 suggestion, did you, sir?

2 A. I have not done it. I still choose to smoke. I  
3 enjoy smoking.

4 Q. Was that a reasonable decision on your behalf?

5 MR. SHEFFLER: Objection to the form.

6 A. As far as I'm concerned, it's something that I  
7 enjoy doing and it provides benefits to me in terms  
8 of that enjoyment, and so personally it's a  
9 reasonable decision. I am fully aware as much as  
10 anyone of what public health authorities have said  
11 about smoking and health. I still decide personally  
12 that I enjoy smoking and it provides benefits to me.

13 Q. Have physicians told you that your smoking can  
14 kill you?

15 A. I'm not sure whether that's the precise terms  
16 that a doctor said it to me. I'm certainly well  
17 aware of what is on -- on packages in terms of health  
18 warnings, and I'm certainly well aware of what -- the  
19 public health authorities' views on that.

20 Q. Well let me ask you this, sir, knowing that they  
21 didn't use probably the precise words I just used:  
22 Has any physician ever told you that your cigarette  
23 smoking can kill you?

24 A. Again I'm not sure whether the precise wording  
25 was -- was that, but certainly there has been, I

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1 mean, the indication from -- from doctors that I've  
2 been to that it would be sensible to either reduce  
3 smoking or stop smoking, just as they have told me  
4 that I should take some more exercise and I should  
5 lose some weight. Unfortunately -- well I don't know  
6 whether it's unfortunate, but with all three of  
7 those -- those matters, I haven't taken that much  
8 more exercise and I still enjoy eating as well.

9 Q. So you would agree also, sir, that if others  
10 have been advised by their physicians to quit smoking  
11 and have been unable to do so, it would be reasonable  
12 for them to continue with their smoking, isn't it,  
13 sir?

14 MR. SHEFFLER: Objection to the form of the  
15 question, objection to the -- to the use of the word  
16 "unable" in light of the witness's prior testimony.

17 A. Yeah, I mean, "unable," I don't know. I mean --  
18 I mean, to -- to -- to personal experience, I mean, I  
19 have a -- I have a grandfather who's -- who's 93 or 4  
20 and who still smokes and, as far as I know, has never  
21 chosen to not smoke. My father is six -- no, he's --  
22 he's about 74 now. When he retired at age 60, he  
23 chose to stop smoking and he did it immediately.

24 Q. Move to strike as nonresponsive.

25 Sir, you -- you are aware that the medical

1 community views smoking as -- I'm sorry, strike  
2 that.

3 You are aware that the medical community views  
4 the nicotine in cigarettes as addictive; isn't that  
5 true?

6 A. I'm very well aware of what the -- the U.S.  
7 Surgeon General and I think it's, I mean, generally  
8 the view of -- of the medical community these days  
9 that smoking is addictive. I'm not sure it's always  
10 well defined what they mean by that. And the fact is  
11 it's very clear that many, many people have chosen to  
12 stop smoking and then have done so.

13 MS. WIVELL: Mr. LaBorde, could you hand  
14 the witness Plaintiffs' Exhibit 590.

15 (Plaintiffs' Exhibit 590 was handed  
16 to the witness.)

17 THE WITNESS: Thanks.

18 BY MS. WIVELL:

19 Q. Sir, could you turn to the fifth page of  
20 Exhibit 590.

21 A. Yep.

22 Q. These are the Responses and Objections of B.A.T.  
23 Industries P.L.C. to Plaintiffs' First Set of  
24 Requests for Admission to B.A.T. Industries;  
25 correct?

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- 1 A. That is correct.
- 2 Q. And there plaintiffs ask B.A.T. Industries to
- 3 admit that cigarettes or nicotine are addictive;
- 4 correct?
- 5 A. It says "Request Number 7. Admit that
- 6 cigarettes," then in brackets, "(or nicotine)," close
- 7 brackets, "are addictive."
- 8 Q. And B.A.T. Industries denied that cigarettes or
- 9 nicotine were addictive; correct?
- 10 A. The response written here is that "Response to
- 11 Request Number 7. BAT Industries objects to Request
- 12 Number 7 on the ground that the term 'addiction' --
- 13 and that's placed in quotation marks -- "is used by
- 14 different people to refer to different things, and
- 15 the request is therefore vague and ambiguous. BAT
- 16 Industries denies that nicotine or cigarettes are
- 17 addictive insofar as that term is intended to imply
- 18 that smokers cannot quit or have lost control of
- 19 their smoking behavior, and therefore denies Request
- 20 Number 7."
- 21 Q. Now, sir, the next request or --
- 22 In the next request plaintiffs ask B.A.T.
- 23 Industries to admit that cigarettes or nicotine cause
- 24 dependence; correct?
- 25 A. Yeah, Request Number 8 says "Admit that

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1 cigarettes," then in brackets, "(or nicotine)," close  
2 brackets, "cause dependence."

3 Q. And again B.A.T. Industries essentially denies  
4 that cigarettes or nicotine cause dependence in their  
5 answer, doesn't it?

6 A. What it says, a "Response to Request Number 8.  
7 BAT Industries objects to Request Number 8 on the  
8 ground that the term 'dependence' is used by  
9 different people to refer to different things, and  
10 the request is therefore vague and ambiguous. BAT  
11 Industries denies that nicotine or cigarettes cause  
12 dependence insofar as that term is intended to imply  
13 that smokers cannot quit or have lost control"  
14 over -- "of their smoking behavior, and therefore  
15 denies Request Number 8."

16 Q. Sir, isn't it true that in essence cigarette  
17 manufacturers are in the business of delivering  
18 nicotine in a useful, attractive package?

19 MR. SHEFFLER: Objection to the form.

20 MS. WIVELL: Let me rephrase the question.

21 Q. Isn't it true that in essence cigarette  
22 manufacturers are in the business of delivering  
23 nicotine in an attractive package?

24 MR. SHEFFLER: Same objection.

25 A. And the answer is no. I mean, people who

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1 manufacture cigarettes are in the business of -- of  
2 producing something to which there is consumer  
3 demand, and that -- and cigarettes are -- are, you  
4 know, clearly simply not just something that -- that  
5 relates to nicotine. Cigarettes and cigarette  
6 smoking has -- has many factors related to it.  
7 There's various social factors in terms of the  
8 products themselves. Taste and other characteristics  
9 related to cigarettes are -- are things which a  
10 consumer would use to try and determine whether they  
11 wished to choose that product.

12 Q. Sir, your company here or your companies -- no,  
13 strike that.

14 Your company, B.A.T. Industries, has denied in  
15 this request for admission that cigarettes are  
16 addictive and can cause dependence; right?

17 MR. SHEFFLER: Objection --

18 MR. FRANKEL: Object.

19 MR. SHEFFLER: -- to the form of the  
20 question. There's no foundation he's --

21 MS. WIVELL: Well let me rephrase it.

22 MR. SHEFFLER: Okay.

23 BY MS. WIVELL:

24 Q. B.A.T. Industries has denied that cigarettes are  
25 addictive --

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1 MR. SHEFFLER: Asked and answered.

2 Q. -- in this --

3 MR. SHEFFLER: I'm sorry.

4 Q. -- interrogatory -- or in this answer -- strike  
5 that.

6 B.A.T. Industries has denied in this response to  
7 request for admissions that cigarettes or nicotine  
8 are addictive; right?

9 MR. SHEFFLER: Asked and answered,  
10 objection.

11 A. B.A.T. Industries -- and it is important to --  
12 to refer to the precise answer because, I mean, what  
13 it points out is the term "addiction" is used by  
14 different people to refer to different things, but it  
15 says that "BAT Industries objects to Request Number 7  
16 on the ground that the term 'addiction,'" inverted  
17 commas, "is used" to -- "is used by different people  
18 to refer to different things, and the request is  
19 therefore vague and ambiguous." And "BAT Industries  
20 denies that nicotine or cigarettes are addictive  
21 insofar as that term is intended to imply that  
22 smokers cannot quit or have lost control of their  
23 smoking behavior, and therefore denies Request  
24 Number 7."

25 Q. Would it re -- similarly be reasonable for

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1 smokers to believe that cigarette smoking is not  
2 addictive?

3 A. I'm not sure what cigarette smokers believe. I  
4 would imagine in many countries in the world now  
5 given what the -- the recent public health views have  
6 been is that many people will hear what, for example,  
7 the U.S. Surgeon General and others have said in  
8 public and -- and take some belief that -- that  
9 smoking is addictive in some fashion.

10 Q. Do you believe cigarette smoking is addictive?

11 A. If by "addictive" you mean can people stop  
12 smoke -- or people somehow are unable to stop  
13 smoking, clearly not. I mean, the whole evidence in  
14 terms of the way behavior has -- has changed in terms  
15 of people deciding to stop smoking most clearly  
16 demonstrates that people can and do stop smoking.

17 Q. So it would be reasonable for -- for smokers to  
18 believe that they can smoke and not get hooked on  
19 cigarettes; right?

20 MR. SHEFFLER: Objection to the form of the  
21 question.

22 A. Again, I mean, if you take a look of -- of -- of  
23 where the public health authorities have given views,  
24 the view predominantly these days is smoking is an  
25 addiction. I would imagine that most people will

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1 believe whatever they hear in -- in the open public  
2 environment. The fact is, though, that year after  
3 year people decide to choose to stop smoking and they  
4 do so.

5 Q. Well so it would be fair to say that smokers  
6 could then smoke cigarettes and believe that they're  
7 not going to be addicted because it's so easy to give  
8 up cigarettes; right?

9 MR. SHEFFLER: Objection. Anything is  
10 possible, Counselor. That's an improper question.

11 MS. WIVELL: I object to your coaching the  
12 witness --

13 MR. SHEFFLER: It's an improper --

14 MS. WIVELL: -- again.

15 MR. SHEFFLER: It's an improper question.

16 A. I'm sorry, can you ask it again.

17 Q. Certainly. It would be fair to say then that  
18 smokers could smoke cigarettes and believe they're  
19 not going to be addicted because it's so easy to give  
20 up cigarette smoking; right?

21 MR. SHEFFLER: Same objection, and it's a  
22 compound question and assumes facts not in evidence.

23 A. I mean, my view on that matter is that -- that  
24 the predominant view that's been put forward in -- in  
25 the -- the public arena these days is that smoking is



1 an addiction, and my guess is that if you do a survey  
2 of people, most people will believe what, for  
3 example, the U.S. Surgeon General has said. As a  
4 matter of fact, it is very clear that -- that people  
5 continue to decide to stop smoking and do so.

6 Q. So let me understand this. It's fair and  
7 reasonable for B.A.T. Industries to deny that  
8 cigarettes are addictive, but it's not reasonable for  
9 smokers to believe that cigarettes are not  
10 addictive? Is that what you're telling us?

11 MR. FRANKEL: Object to the form,  
12 mischaracterizes the testimony.

13 A. I mean -- I mean, again if you refer to what  
14 B.A.T. Industries say in terms of the question are --  
15 are cigarettes or admit that cigarettes or nicotine  
16 are addictive, they say that "BAT Industries denies  
17 that nicotine or cigarettes are addictive insofar as  
18 that term is intended to imply that smokers cannot  
19 quit or have lost control of their smoking  
20 behavior ...."

21 And I would imagine that, I mean, the many  
22 millions of people who have chosen to quit smoking  
23 and have done so without any specialized help at all  
24 would have in their view that actually, no, they were  
25 not addicted to -- to cigarettes. It depends very

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1 much on how you define the term and what you  
2 understand by the term "addiction." And --  
3 Q. Well sir -- I'm sorry.

4 MR. SHEFFLER: Are you finished?

5 THE WITNESS: No, if I can continue.

6 A. But if you -- if -- not only in -- in the public  
7 arena, but also within the scientific community that  
8 the term "addiction" is now applied to many, many  
9 things, and for example, chocolate. Just before I  
10 came over here, there was a -- a scientific report  
11 in -- that was publicized in the British literature  
12 talking about how chocolate contains a substance  
13 called phenethylamine and -- and that it was thought  
14 that that was one of the reasons why people enjoy  
15 chocolate and find it difficult to stop having  
16 chocolate.

17 But I think if you define the term which tries  
18 to compare people who choose to smoke with people  
19 who -- who take heroin or abuse heroin, then I think  
20 the two situations are very, very different, and  
21 therefore I think it is reasonable for B.A.T.  
22 Industries and it's certainly the view that we have  
23 stated from British-American Tobacco Company Limited  
24 that if those are the terms you try and define this  
25 in, then smoking's not addictive.

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1 Q. Well, sir, you're aware of the diagnostic  
2 criteria from the American Psychiatric Association  
3 Diagnostic and Statistical Manual concerning the  
4 definition of "addiction"; right?

5 MR. SHEFFLER: Objection. I -- I -- I  
6 object to that, lack of foundation. I object on the  
7 grounds that the -- there are at least four versions  
8 of the Diagnostic and Statistical Manual, and I  
9 object on the grounds that there -- in none of those  
10 versions is the word "addiction" ever mentioned.

11 A. I'm aware that there are, I mean, at least these  
12 four. I believe there are four, and it's what I  
13 referred to when I read to you from the U.S. Surgeon  
14 General's report of 1988 where he talks about there  
15 is a definition; I think it's more likely to be of  
16 "dependence," not of "addiction." I'm not sure it's  
17 a term they used, certainly in the more recent  
18 versions, that that is broadly the same as that that  
19 is given by the World Health Organization but not  
20 identical, which -- which clearly indicates there  
21 have been a variety of different criteria used.

22 Q. And "dependence" is used in that definition  
23 synonymously with "addiction," isn't it, sir?

24 MR. SHEFFLER: Objection to the form, lack  
25 of foundation.

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1 A. My view is that, no, it is not synonymous, and I  
2 think the -- the -- the term "dependence" has --  
3 has -- has developed out of "addiction." I think it  
4 was identified by the scientific community that the  
5 term "addiction" was very broad and was being applied  
6 to many different things and they tried to -- to find  
7 another term which they could define a little more  
8 accurately. What I think has happened and certainly  
9 in terms of some of these -- these definitions, that  
10 "dependence" could be applied to -- to many, many  
11 things that people enjoy doing and find that they  
12 don't want to stop doing.

13 Q. Well, sir, you understand that cigarettes meet  
14 the definition of "dependence" according to the  
15 American Psychiatric -- or the DSM-IV; right?

16 MR. SHEFFLER: Objection. If we're going  
17 to use the DSM-IV's definition or diagnostic  
18 criteria, show the witness the -- the document,  
19 please.

20 A. I mean, I am familiar with DSM-IV. If you'd  
21 like to -- for me to look at that, I'm certainly  
22 happy to do so and give you commentary on it. In  
23 terms of again, I mean, those sorts of definitions,  
24 what -- whatever those definitions are, I mean,  
25 there's -- there's a variety of facts which I think

1 distinguishes quite clearly smoking from, for  
2 example, heroin use, and one of those is what happens  
3 when people decide to stop taking those two different  
4 substances. They're clearly very different. If  
5 you -- if you're addicted to heroin, you stop taking  
6 it, there is a very clear set of -- of symptoms, a  
7 syndrome that you can identify which -- which  
8 includes life-threatening symptoms.

9       If you stop smoking, there is no clearly defined  
10 syndrome, and I think that has been very well related  
11 in the scientific literature in terms of different  
12 people will react in different ways and some, for  
13 example, may lose concentration or things that are  
14 fairly minor, such as that, but no way in comparable  
15 to the kind of symptoms that are found when someone  
16 is a heroin addict and is -- is put -- is made to  
17 withdraw.

18               (Plaintiffs' Exhibit 611 was marked  
19               for identification.)

20 BY MS. WIVELL:

21 Q.   Sir, showing you what's been marked as  
22 Plaintiffs' Exhibit 611, this is a document from  
23 Mr. Oldman to Dr. S. J. Green Bates numbered  
24 105392223; correct?

25 A.   Correct.

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1 Q. And the first page is a cover memo -- strike  
2 that.

3 The first page is a cover memo which encloses a  
4 note entitled "SMOKER MOTIVATION AND DEPENDENCY";  
5 correct?

6 A. It's a memo that talks about "Further to our  
7 recent discussion of the ICOSI project, I enclose a  
8 not on," in inverted commas, "'Smoker Motivation and  
9 Dependency,'" yes.

10 Q. And if you turn to the next page, we see that  
11 the title of that is "A NOTE ON SMOKER MOTIVATION AND  
12 DEPENDENCY"; correct?

13 A. That is correct.

14 Q. And you've read this document, haven't you,  
15 sir?

16 A. I've seen this document in the past. I mean,  
17 there are many, many documents obviously that -- that  
18 exist within the company. I'd need to -- to take a  
19 look at it again. If you wish, I can certainly do  
20 that, but I have seen this document in the past.

21 Q. All right. You understand that -- that in the  
22 introduction Mr. Oldman is talking about smoker  
23 motivation; correct?

24 A. Well it says it's a note on smoker motivation  
25 and in -- in the introduction --

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1 MR. SHEFFLER: Oh, sorry, go ahead.

2 THE WITNESS: Oh, sorry.

3 A. -- in the introduction it talks about the smoker  
4 population being heterogeneous and composed of  
5 potentially distinguishable subsets.

6 Q. Now, sir, if we look at the last --

7 MR. SHEFFLER: Counsel -- Counsel, I'm  
8 sorry to interrupt you, but can we take a short  
9 break, a very short break?

10 MS. WIVELL: When we finish with this  
11 document.

12 MR. SHEFFLER: Well --

13 MS. WIVELL: And I won't be long.

14 MR. SHEFFLER: Okay.

15 MS. WIVELL: All right.

16 BY MS. WIVELL:

17 Q. The last sentence on the first page says "The  
18 latter motivation, however," is more -- "more closely  
19 resembles an urge or drive and might be described as  
20 an addictive behaviour beyond cognitive control and  
21 likely to be associated with pharmacological  
22 dependency"; correct?

23 A. That's what it says, so it's a part of this  
24 introduction in this -- this note. I'm not sure what  
25 that note is, whether it's an evaluation of -- of

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1 theories that are put out in the -- in the external  
2 scientific literature. I note certainly in the  
3 reference, the bibliography, which starts on page 17  
4 of the document, which is 240 Bates number, it refers  
5 to a whole series of external publications by a  
6 variety of people and to -- and including Kozlowski,  
7 including Michael Russell and including McKennel, a  
8 whole various series of people publishing in the  
9 external literature.

10 Q. But this particular sentence that we just read  
11 is not footnoted or referenced to any of those  
12 materials that were published in the external  
13 literature, were -- is it, sir?

14 MR. SHEFFLER: I object. That's misleading  
15 in light of the -- of the document's cover note, as  
16 the counsel knows and has not provided the witness a  
17 chance to read, and I at this time request for  
18 completeness sake that that be read into the record.

19 A. I mean, you're correct. There is no reference  
20 to that specific substance, but, I mean, in terms of  
21 writing, I mean, any -- any document, if you're doing  
22 it as an illustrative review -- and I mean, I need to  
23 review this again, but it strikes me given it has 28  
24 references to a variety of scientific papers  
25 published in the open literature it may well be a

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1 literature review; that if you're writing anything,  
2 you don't give reference specifically to every single  
3 statement you make, particularly in the  
4 introduction.

5 Q. Well, sir, if we turn to the top of the page  
6 that ends with Bates number 228, we see that  
7 Mr. Oldman does substantially footnote statements  
8 when he wants to; isn't that true?

9 MR. SHEFFLER: Again, if this document is  
10 going to be questioned of this witness, I move the  
11 court to -- for permission to read for completeness  
12 sake his description of what this document means.  
13 Counsel, can I do that?

14 MS. WIVELL: Not now you can't.

15 MR. SHEFFLER: Well, I mean --

16 MS. WIVELL: Well, I mean, you can petition  
17 all you want, and then if the court grants it, you  
18 can read it at the time of trial.

19 MR. SHEFFLER: But it's -- it's impossible  
20 to -- well it -- the proper procedure should be to  
21 let me put it on the record. If the court finds that  
22 it -- it was inappropriate, he will strike it at that  
23 point. If the court finds that it is appropriate and  
24 it's not read into the record, then the transcript is  
25 going to be misleading. It's going to be

1 incomplete.

2 MS. WIVELL: So --

3 MR. SHEFFLER: How can I get my objection  
4 ruled upon unless I have a -- I think -- I think,  
5 Counsel, that practice should dictate that I be  
6 entitled to read what I feel is necessary for  
7 completeness sake at the time.

8 BY MS. WIVELL:

9 Q. Sir, do you have my question in mind?

10 A. Actually no. You need to repeat it.

11 Q. All right. Well, sir, if we turn to the top of  
12 the page with -- that ends with Bates number 228, we  
13 see that Mr. Oldman does substantially footnote  
14 statements when he wants to, don't we?

15 MR. SHEFFLER: Renew my objection and  
16 request.

17 A. What I see at the top of the page which is five  
18 of the document and -- and 228 as a Bates number,  
19 that there is one statement which he references a  
20 series of external papers from 2 do 12, but again as  
21 I go down through this page, there seems to be many  
22 statements he's not referencing. And -- and -- and  
23 also I think this is likely -- I'm going to have to  
24 look through the document and read it, which I'm more  
25 than happy to do if you'd like me to do so. I mean,

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1 simply because a line is not referenced doesn't mean  
2 that those views are not taken from the external  
3 scientific literature.

4 MS. WIVELL: All right. Why don't we go  
5 off the record.

6 THE REPORTER: Off the record, please.

7 (Recess taken.)

8 BY MS. WIVELL:

9 Q. Sir, if B.A.T. Industries believed that  
10 cigarette smoking was addictive, what could it do to  
11 make its B.A.T. Group companies' cigarettes not  
12 addictive?

13 MR. SHEFFLER: Objection. That question is  
14 highly speculative.

15 A. It's a complicated one. Could you ask me again  
16 because you referred to B.A.T. Industries and you  
17 referred to British-American Tobacco Company and --

18 Q. Well let me re -- rephrase the question.

19 If B.A.T. Industries believed that the  
20 cigarettes made by any of its group companies were  
21 addictive, what could it do to make them not  
22 addictive?

23 MR. FRANKEL: Object to form.

24 MR. SHEFFLER: Same objections as prior  
25 stated, highly speculative.

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1 A. I mean, it's hard to answer such a speculative  
2 question in that what we've talked about so far has  
3 made it very clear that B.A.T. Industries is of the  
4 view that cigarette smoking is not addictive if  
5 you -- what you mean by your term "addiction" means  
6 that people cannot stop smoking.

7 Q. Well let me ask you this: If BATCO believed  
8 that cigarette smoking was addictive, what could it  
9 do to make its cigarettes not addictive?

10 MR. SHEFFLER: I -- I object to the  
11 question and I believe it is improper to ask a  
12 hypothetical question when the facts in evidence are  
13 the contrary.

14 MS. WIVELL: Objection to the coaching of  
15 the witness.

16 MR. SHEFFLER: No, that's -- that's -- that  
17 certainly is no coaching at all. That -- I believe  
18 it is improper to ask a hypothetical question when  
19 the underlying facts are the contrary that's based on  
20 the hypothetical -- upon which the hypothetical is  
21 based.

22 A. Again it's -- it's impossible to answer such a  
23 speculative question in that British-American Tobacco  
24 Company Limited does not believe that smoking is  
25 addictive if you -- what you mean by the term

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1 "addiction," smokers cannot quit smoking. It's  
2 clear that they do.

3 Q. Well let me ask you this, sir: Would you agree  
4 it would be improper to do anything to make -- strike  
5 that.

6 Would you agree that it would be improper to do  
7 anything to a cigarette to make it more difficult for  
8 a smoker to quit smoking?

9 MR. SHEFFLER: Objection to the form.  
10 Again it calls for speculation.

11 A. I'm sorry, could you repeat the question again.

12 Q. Certainly. Would you agree that it would be  
13 improper to do anything to a cigarette to make it  
14 more difficult for a smoker to quit smoking?

15 MR. SHEFFLER: Same objection.

16 A. I mean, again that's entirely speculative  
17 because I believe and it's evidenced by what has  
18 clearly happened in many countries around the world,  
19 is that people can and do quit smoking.

20 Q. Well, sir, apart from your belief on that issue,  
21 let me re-ask the question because it doesn't call  
22 for that answer.

23 Would you agree that it would be improper to do  
24 anything to a cigarette to make it more difficult for  
25 a smoker to quit smoking?

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1 MR. SHEFFLER: Objection to the statements  
2 of counsel, objection as asked and answered.

3 A. And again I don't quite know how to help you  
4 in -- in answering that question because it is such a  
5 matter of -- of speculation. It is British-American  
6 Tobacco's view that people can and -- and it's  
7 clearly the case that people do stop smoking, and I  
8 don't know of anything because of -- of that view  
9 taken from the scientific literature and taken from  
10 observations of people, that it's really hard to  
11 answer the question.

12 Q. Well would you agree that it would be  
13 inappropriate to do something secretly to a cigarette  
14 to make it harder for a smoker to quit?

15 MR. SHEFFLER: That's the same question.  
16 Objection, asked and answered.

17 A. To your question, I mean, if there was something  
18 that could be done to a cigarette -- and my -- my  
19 view is there isn't something that can be done to a  
20 cigarette -- which would make it impossible for  
21 someone to stop smoking, and then, well, maybe it  
22 would be improper.

23 Q. All right. Do you understand that most smokers  
24 want to quit smoking?

25 MR. SHEFFLER: Objection to the form,

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1 overbroad and vague.

2 A. I've seen in -- in some of the public health  
3 authorities' reports a suggestion that many people  
4 would wish to quit smoking. I don't know exactly how  
5 many people might wish to quit smoking. The fact is  
6 it seems that people who decide to quit smoking do  
7 so. They do so apparently in the main again -- or  
8 the overwhelming majority again, referring to the  
9 U.S. Surgeon General's report, without any  
10 specialized help at all.

11 Q. Well, sir, you understand that the nicotine  
12 patch is big business here in the United States,  
13 don't you?

14 MR. SHEFFLER: Objection to the form.

15 A. I mean, I never looked in terms of -- of the  
16 commercial -- I mean, how much nicotine replacement  
17 therapies are in terms of -- of how much money they  
18 make, but what is clear again from the scientific  
19 literature is that the nicotine replacement  
20 therapies, whether that be nicotine gum or nicotine  
21 sprays or nicotine patches, clearly has not been  
22 shown to be something which substitutes smoking;  
23 otherwise, you wouldn't see still the number of  
24 people that you see smoking.

25 What it also goes to is the fact that, as far as

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1 I know from the views that have been taken by the  
2 public health authorities on -- on nicotine patches,  
3 nicotine gums and nicotine sprays, it's been  
4 suggested that they in no terms create a dependence  
5 upon those -- those devices. That goes to me to the  
6 point that it's -- I mean, it would suggest to me  
7 from -- from -- from that observation by the public  
8 health authorities that smoking and smoking behavior  
9 is clearly not dependent upon nicotine.

10 One further example of that perhaps is -- is the  
11 failure of the R.J. Reynolds product Premier, which  
12 was extraordinarily low tar but obviously had  
13 nicotine. That -- that product failed, and if the  
14 hypothesis were to be that nicotine is the sole  
15 determinant of smoking, I mean, it clearly is not the  
16 case from -- from all of those examples.

17 Q. You never smoked a Premier, did you?

18 A. Yes, I have.

19 Q. Oh, you did. And they tasted terrible, didn't  
20 they?

21 A. They didn't taste awfully good, no.

22 Q. Now, sir, you understand that smokers continue  
23 to use cigarettes even after they've had organs  
24 removed due to cancer; right?

25 A. I mean, I don't know personally of any example.

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1 I've -- I've heard of reports that some people may do  
2 that. Why they do that, I do not know.

3 Q. Sir, isn't it a fact that one of the reasons  
4 that B.A.T. Industries does not want to admit that  
5 cigarette smoking is addictive is because that one  
6 cannot claim a smoker has free choice if one is  
7 addicted?

8 MR. FRANKEL: Object to form, foundation.

9 MR. SHEFFLER: Object to the assumption of  
10 the question.

11 A. I mean, again B.A.T. Industries takes its view  
12 from British-American Tobacco Company Limited. It's  
13 British-American Tobacco's view that -- that there is  
14 nothing in a cigarette that stops people from  
15 quitting smoking.

16 MS. WIVELL: Mr. LaBorde, could you get out  
17 Exhibit 450, please.

18 (Plaintiffs' Exhibit 450 was handed  
19 to the witness.)

20 BY MS. WIVELL:

21 Q. Sir, showing you what's --

22 A. Thanks.

23 Q. -- been marked previously as Plaintiffs'  
24 Exhibit 450, this is a memo from Mr. Knopick to  
25 Mr. Kloepper of The Tobacco Institute. Could you

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1 turn to the last page.

2 MR. SHEFFLER: I object to the use of this  
3 document with this witness. It certainly isn't  
4 anything from BATCO or British-American Tobacco  
5 Company.

6 Q. Do you see there it says "Shook, Hardy reminds  
7 us, I'm told, that the entire matter of addiction is  
8 the most potent weapon a prosecuting attorney can  
9 have in a lung cancer/cigarette case. We can't  
10 defend continued smoking as," quote, "'free choice,'"  
11 quote, "if the person was," quote, "'addicted,'"  
12 close quote?

13 MR. SHEFFLER: Same objection.

14 A. I mean, that -- what it says in -- in this  
15 document, which goes -- is sent from one person I do  
16 not know to another person I do not know, I don't  
17 think it has anything to do with British-American  
18 Tobacco or -- or has anything to do with the views  
19 that British-American Tobacco had. British-American  
20 Tobacco's views on -- on the matter of smoking and --  
21 and whether smoking is addictive or not is based upon  
22 science, not based upon any other preconceptions.

23 Q. Now Shook Hardy is a law firm that advises the  
24 tobacco industry; correct?

25 MR. SHEFFLER: Objection to the form.

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1 A. There is, as far as I know, a -- a law firm  
2 called Shook, Hardy & Bacon that -- that is involved  
3 in -- in litigation.

4 Q. And Shook, Hardy & Bacon advised BATCO, too,  
5 didn't they, sir?

6 MR. SHEFFLER: Objection to the form.

7 A. I mean, if that is the case, I'm not quite sure  
8 when they -- they advised British-American Tobacco  
9 Company Limited.

10 Q. Isn't it a fact, sir, that Lionel Blackman sent  
11 them a copy of his revisions of the Blue Book that we  
12 were talking about yesterday so that they could  
13 comment on it?

14 MR. SHEFFLER: Objection to the form, lack  
15 of foundation.

16 A. I don't know whether that's the case or not. It  
17 may have been.

18 Q. Now, sir, you're aware of a phenomenon called  
19 compensation, aren't you, sir?

20 A. Yeah, compensation's a very well-known  
21 phenomenon discussed extensively in the scientific  
22 literature. It's something that -- that takes a -- a  
23 major chunk out of The Tobacco Products Research  
24 Trust document I've been talking about before. It's  
25 something that's been discussed certainly very much

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1 in the -- in the efforts that British-American  
2 Tobacco has made with the U.K. government in trying  
3 to work on a -- a -- a product modification program.  
4 It's one of the issues that was very much at the  
5 forefront.

6 It was also one of the issues that was discussed  
7 extensively in a conference where -- that  
8 British-American Tobacco sponsored that was certainly  
9 attended by a variety of independent scientists and  
10 the U.K.'s Department of Health called Smoking  
11 Behavior, and that is a conference that was written  
12 up as a book and is referred to in the United States  
13 Surgeon General's report as a reference on the matter  
14 in relation to compensation, yes.

15 Q. Now compensation is the tendency for a smoker to  
16 obtain a similar delivery, intake and uptake of smoke  
17 constituents on a daily basis from a variety of  
18 products with different standard machine smoking  
19 deliveries; right?

20 A. There are a variety of definitions on  
21 compensation. I have one here, which might be a -- a  
22 useful one, in that it's -- it's the one that is  
23 given by Sir Peter Froggatt in this document, if I  
24 can find it. If you -- if you give me a second, I --  
25 oh, actually here we are. Com -- it's on page 26 of

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1 The Tobacco Products Research Trust 1982-to-1996  
2 review by Cheryl Swann and Sir Peter Froggatt, and  
3 the way he defines it here -- and -- and my guess, it  
4 would be similar to our understanding since it was  
5 very close cooperation with Sir Peter Froggatt and --  
6 and the U.K. industry -- the U.K. government on this  
7 matter. He defines it as "Compensatory smoking has  
8 been defined as the subconscious control of the  
9 intake of one or more smoking components by a change  
10 in one's smoking pattern so that similar intakes are  
11 achieved from cigarettes with dissimilar machine  
12 smoked deliveries." And what he refers to there is a  
13 reference which says "(Creighton & Louis" in  
14 "1978)." That reference refers to the -- the -- the  
15 book that I was telling you about, the Smoking -- the  
16 book that's entitled, I believe, Smoking Behavior.  
17 And it gives a reference to that book in -- in Sir  
18 Peter Froggatt's review of -- of the work that was  
19 undertaken in the U.K.

20 Q. Now, sir, it is clear, isn't it, that BATCO  
21 knows that smoking occurs? Or I'm sorry, strike  
22 that.

23 It is clear that BATCO knows that compensation  
24 occurs; right?

25 A. It is clear that the general academic community

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1 and British-American Tobacco know that there is a  
2 phenomenon called compensation that occurs when  
3 people -- I mean, in particular people decide to --  
4 to choose to switch from a -- for example, a  
5 higher-tar cigarette to a lower-tar cigarette. And  
6 it's thought certainly, as is reflected by the  
7 statement by -- the review by Sir Peter Froggatt,  
8 that that is a reaction to one or more components in  
9 tobacco smoke, probably most likely to changes in  
10 taste than people's behavior. Trying to respond to  
11 those change of behaviors, they choose different  
12 products.

13 Q. Sir, isn't it a fact that most compensation is  
14 accomplished to make sure the smoker who is smoking a  
15 low-tar/nicotine cigarette either consciously or  
16 unconsciously consumes the same amount of nicotine  
17 that he or she was smoking with a normal-tar/nicotine  
18 cigarette?

19 MR. SHEFFLER: Counsel, I object to the  
20 form of the question. You may want to try that  
21 again.

22 A. I'm sorry, could you read the question again.

23 Q. Yes, sir. Isn't it a fact that compensation is  
24 accomplished most often by smokers who either  
25 consciously or unconsciously are smoking

1 low-tar/nicotine cigarettes but who modify their  
2 smoking behavior to obtain the same amount of  
3 nicotine that they were smoking with  
4 higher-tar/nicotine cigarettes?

5 MR. SHEFFLER: I still say objection to the  
6 form.

7 A. Let me try and again explain what compensation  
8 seems to represent. It's clear -- and again I refer  
9 back to the -- the review by Cheryl Swann and Sir  
10 Peter Froggatt of The Tobacco Products Research  
11 Trust -- that compensatory smoking is a subconscious  
12 control of the intake of one or more smoking  
13 components by changing one's person -- or one's  
14 smoking patterns so there are similar intakes. And  
15 what it's -- what they're talking about is that if  
16 there is -- someone chooses to smoke a -- a cigarette  
17 which is different to what they're accustomed to,  
18 then they may change their behavior in some fashion,  
19 and that will go in various directions. For example,  
20 if someone were to be very used to smoking a  
21 very-low-tar cigarette and they chose to smoke a  
22 high-tar cigarette, what is likely to happen is they  
23 will take very small puff volumes because they're  
24 unaccustomed to the high amount of taste that you  
25 would find in a high-tar cigarette. I -- I gather

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1 the same happens in reverse also.

2 It is a very common and well-known phenomena.

3 It's been discussed in the scientific -- scientific

4 literature for many years. We have certainly as

5 British-American Tobacco contributed I think

6 significantly into -- into the understanding of the

7 issues through our cooperation with the British

8 government and -- and through the product

9 modification program the U.K. government has run for  
10 many years.

11 (Plaintiffs' Exhibit 612 was marked  
12 for identification.)

13 THE WITNESS: Thanks.

14 BY MS. WIVELL:

15 Q. Sir, showing you what's been marked as

16 Plaintiffs' Exhibit 612, this is a document that  
17 begins with Bates number 105399614; correct?

18 A. That's correct.

19 Q. And the cover memo is entitled "COMPENSATION";  
20 right?

21 A. That's correct.

22 Q. And then if we turn to the second page, there is  
23 a memo entitled "COMPENSATION - A SUMMARY OF CURRENT  
24 VIEWS, By A.K. Comer"; correct?

25 A. On the top of the document dated 1982 it says

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1 "COMPENSATION - A SUMMARY OF CURRENT" REVIEWS and  
2 then underneath -- and I assume what it means is it's  
3 a summary of the current views in the external  
4 literature, and then the author of that is A. K.  
5 Comer.

6 Q. And in the background section on the first page  
7 of the memo, Dr. Comer discusses three ways that  
8 smokers may either consciously or unconsciously  
9 compensate; correct?

10 A. It says "A smoker may, either consciously or  
11 unconsciously, control ... the number of cigarettes  
12 smoked each day, and/or ... the way in which each  
13 cigarette is smoked and hence the delivery of various  
14 smoke constituents to the mouth, and/or (3) the  
15 amount of smoke inhaled and the timing and depth of  
16 inhalation, which will affect both intake and  
17 retention of smoke constituents."

18 Q. And isn't it a fact that BATCO did experiments  
19 which showed that smokers who typically smoked  
20 normal-tar/nicotine cigarettes but then changed to  
21 low-tar/nicotine cigarettes compensated during their  
22 smoking behavior so that they obtained as much  
23 nicotine, if not more, than they normally did with  
24 their regular cigarettes?

25 MR. SHEFFLER: Objection to the form.

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1 A. I mean, I think the general understanding, which  
2 is the understanding of research undertaken at  
3 British-American Tobacco and the understanding of  
4 research that's been undertaken by -- by the U.K.  
5 government and as they reported in The Tobacco  
6 Products Research Trust 1982-to-1996 review by Cheryl  
7 Swann and Sir Peter Froggatt, is that there is some  
8 compensation when people change from a high-tar  
9 product to a -- a lower-tar product. It is  
10 uncertain, as is very clear from the definition given  
11 by Sir Peter Froggatt, as to the reason to that.  
12 There's a good possibility and quite likely that's  
13 related to a change in -- in taste.

14 In terms of experiments, certainly The Tobacco  
15 Products Research Trust undertook experiments which  
16 have been -- by independent academics that have been  
17 published, and what those experiments suggest and is  
18 reviewed here and is also reviewed in this book  
19 Nicotine, Smoking and The Low Tar Programme by  
20 Nicholas Wald and Sir Peter Froggatt, which is a  
21 publication from Oxford Medical Publications, that  
22 there is some compensation, but it seems to be from  
23 the data that's available that -- that people do not  
24 completely compensate.

25 And that's what led the U.K. in its product

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1 modification program to conclude that the effect  
2 of -- of what their program was, which was advise  
3 people and work with the industry to reduce tar over  
4 the years, was still applicable; that compensation  
5 was not ruling out the effect of -- of what they  
6 wished to do, which was to get people to be smoking  
7 lower-tar cigarettes.

8 Q. Move to strike as nonresponsive. Sir, my  
9 question didn't have anything to do with Peter  
10 Froggatt. It asked whether isn't it true that BATCO  
11 did work that showed that smokers compensated in  
12 order to try and make up for decreased nicotine in  
13 low -- by smoke -- when they smoked low-tar/nicotine  
14 cigarettes.

15 MR. SHEFFLER: Objection. The question was  
16 asked and answered. And I object to counsel's  
17 statements.

18 A. And again my response is that British-American  
19 Tobacco Company has -- has looked at research in  
20 relation to compensation to try and understand the  
21 issue. That is an issue that has been discussed  
22 broadly in the scientific literature. The research  
23 that we've undertaken certainly in the early days, in  
24 1978, was published in a book called Smoking  
25 Behavior. It's referenced in the United States

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1 Surgeon General's reports. It's referenced in the  
2 review of The Tobacco Products Research Trust  
3 1982-to-1996 report by Cheryl Swann and by Sir Peter  
4 Froggatt. The research is referenced in the  
5 Nicotine, Smoking and Low Tar Programme book from the  
6 Oxford Medical Publications authored by Nicholas Wald  
7 and Sir Peter Froggatt, and this is a matter of  
8 general scientific debate which we contributed to.

9       And what generally the scientific community  
10 believes is that there is some extent of -- of  
11 compensation that occurs when someone changes from  
12 smoking a high-tar product to someone who's smoking a  
13 low-tar product. It is generally thought that much  
14 of the reason that happens is because of taste,  
15 and -- and you see exactly the reverse happening when  
16 someone starts with a low-tar product and goes to a  
17 high-tar product. They will adjust their smoking  
18 behavior because they're accustomed to a particular  
19 taste.

20       Clearly as you go from high tar to low tar, you  
21 also go from high nicotine to low nicotine, but how  
22 to extract one from the other is uncertain. What our  
23 impression is from the scientific literature is that  
24 it's really based upon taste, and -- and the view  
25 again of the U.K. government is -- as given in this

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1 book on The Tobacco Products Research Trust, is that  
2 compensation, although it -- it does occur,  
3 particularly when people switch, is -- is not  
4 complete; therefore, someone who smokes a lower-tar  
5 product will, even if they are to compensate in the  
6 early days -- and that may change as -- as they go  
7 and get accustomed to that product -- that  
8 compensation means that they still have less -- they  
9 actually obtain less tar per day than they would if  
10 they were smoking a high-tar product.

11 Q. Move to strike everything after "understand the  
12 issue."

13 Sir, isn't it true that work that was done  
14 in-house at BATCO showed that smokers compensated  
15 much like Pavlov's dogs when it came to trying to  
16 make up for nicotine when they switched to  
17 low-tar/nicotine cigarettes?

18 MR. SHEFFLER: Object to the form.

19 A. I mean, I'm not sure how you -- you're -- you  
20 make a comparison with Pavlov's dogs. The  
21 understanding I have of -- of the Pavlovian  
22 experiments is it's a unconscious reaction to  
23 something, but I'm not very familiar with -- with --  
24 with the Pavlovian experience.

25 What is clear has happened, as I think it would

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1 with -- with any product, if you make a change in one  
2 particular taste characteristic that you're used to  
3 to another taste characteristic that you're used to,  
4 you are likely naturally to adjust your behavior  
5 because you're used to a particular taste.

6 Q. Sir, could you turn to Exhibit 608.

7 A. Do I have that one? No.

8 (Exhibit 608 was handed to the witness.)

9 THE WITNESS: Thanks.

10 Q. Could you turn to the page that ends with 312.

11 A. Yep, got that.

12 Q. Do you see there the paragraph that begins "It  
13 is generally accepted that a large number of habitual  
14 smokers are influenced in their smoking habit by the  
15 amount of nicotine that they draw from a cigarette"?

16 A. Oh, I'm sorry, can I just find that. Where --  
17 where does that start?

18 Q. Second complete paragraph, sir.

19 A. Okay, I've got it.

20 Q. And it goes on to say "Over a period of time,  
21 during which they are learning how to smoke  
22 effectively - that is so that they do not make  
23 themselves feel ill, but do derive pleasure and  
24 satisfaction from smoking - they probably build up an  
25 association in their minds between the mouth

1 sensations such as flavour, irritation and 'impact'  
2 and the amount of smoke that gives them the  
3 satisfaction of smoking. This is" similar -- "This  
4 is a similar mechanism to Pavlov's dogs"; correct?

5 A. That's what it says in this document, which has,  
6 as far as I can tell, no author, and I'm not sure  
7 whether it's a complete document. It says that, and  
8 what it's referring to here is -- is mouth sensations  
9 such as flavor, irritation and impact. And as I've  
10 explained before, what impact means is -- is the  
11 catch at the back of the throat that a smoker gets on  
12 inhaling a cigarette.

13 And -- and it seems to me what it's talking  
14 about is -- is adjustments to -- to taste and  
15 accustomed taste, and again, I mean, I'm not sure  
16 exactly what the mechanisms of Pavlov's dogs referred  
17 to apart from some -- as I gather, some -- some  
18 in-built reaction to stimuli that -- I mean, to try  
19 and -- I don't know. I won't go on with that  
20 answer. I really don't know what the -- exactly what  
21 the Pavlov's dogs experiments were.

22 Q. Sir, isn't it a fact that impact is associated  
23 with pH in the -- of the cigarette smoke?

24 MR. SHEFFLER: Objection, lack of  
25 foundation.

1 A. I mean, impact is, as I said, the catch at the  
2 back of the throat, and -- and certainly there have  
3 been discussions and I think it's discussed in --  
4 in -- in -- in part in the U.S. Surgeon General's  
5 report of 1998 what -- what effect pH may have on --  
6 on impact. And -- and for example, it is thought --  
7 and I can refer precisely here, if you -- if you  
8 wish.

9 When it talks about pHs and smoke in the U.S.  
10 Surgeon General's report of 1998 --

11 MR. SHEFFLER: 1988.

12 A. Oh, sorry, 1988. I'll try and get that one  
13 right.

14 It talks about "The pH" -- and this is on  
15 page 29 of the United States Surgeon General's report  
16 of 1998. He talks about "The pH of tobacco smoke is"  
17 an "important" -- "is important in determining  
18 absorption of nicotine from different sites within  
19 the body. The pH of individual puffs of cigarettes  
20 made" from "flue-cured tobacco, the predominant  
21 tobacco in most American cigarettes, is acidic and  
22 decreases progressively with sequential puffs from pH  
23 6.0 to 5.5," and it gives a reference to Brunneemann  
24 and Hoffmann, who I gather are scientists with the  
25 American Health Foundation. It talks about "At these

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1 pHs, the nicotine is almost completely ionized."

2       When it goes on further in the third paragraph  
3 on page 29 of the U.S. Surgeon General's report on --  
4 on -- of 1988, it says "When tobacco smoke reaches  
5 the small airways and alveoli of the lung, the  
6 nicotine is rapidly absorbed. The rapid absorption  
7 of nicotine from cigarette smoke through the lung  
8 occurs because of the huge surface area of the  
9 alveoli and small airways and because of" the  
10 "dissolution of nicotine a physiological pH  
11 (approximately 7.4), which facilitates transfer  
12 across cell membranes."

13       I think there what it's talking about is  
14 effectively, yes, in terms of absorption in -- at  
15 the -- at the back of the throat, which may give rise  
16 to the sensations described as impact, the pH can  
17 have some effect, but in terms of absorption in the  
18 lung, that is determined by -- by the physiological  
19 pH, which is approximately 7.4, and it doesn't matter  
20 too much what the pH of the tobacco smoke is in terms  
21 of that absorption.

22 Q.   And isn't it a fact, sir, that the B.A.T. Group  
23 companies manipulate the pH of the cigarette smoke in  
24 order to free up more nicotine so it's present in a  
25 free base form and more easily absorbed?

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1 MR. FRANKEL: Object to form, foundation.

2 A. I mean, the answer to that is no,  
3 British-American Tobacco does not manipulate the --  
4 the pH of smoke in any of its commercial --  
5 commercial products to change the -- the free to  
6 bound form of nicotine.

7 MS. WIVELL: Mr. LaBorde, could you get out  
8 Exhibit 520, please.

9 (Plaintiffs' Exhibit 520 was handed  
10 to the witness.)

11 THE WITNESS: Thanks.

12 BY MS. WIVELL:

13 Q. Sir, showing you what's previously been marked  
14 as Plaintiffs' Exhibit 520, this is a product  
15 development review from BATCO; correct?

16 A. On page 403 of the Bates number it says "Product  
17 Development Review" and at the bottom it says  
18 "Research and Development."

19 Q. And the title of the document is "The  
20 Significance of pH in Tobacco and Tobacco Smoke";  
21 right?

22 A. Yeah, on 404 it says, of June 1988, "The  
23 Significance of pH in Tobacco and Tobacco Smoke."

24 Q. And if we turn to the bottom of page 407, we see  
25 there reference to Figure 2; correct?

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1 A. This page is talking about the effects of pH on  
2 smoke, and it says "The important feature of Figure  
3 2 ...," so it is referring to Figure 2, yes.

4 Q. And it says "... is that relatively small  
5 changes in pH between 6 and 8 have a very large  
6 effect on the proportion of free base nicotine in the  
7 smoke"; correct?

8 A. That's what it says, but I -- I must note also  
9 that a change between pH 6 and -- and pH 8 is  
10 actually a very large change in terms of pH.

11 Q. And if we go on to the top of the next page, it  
12 notes that "Free base" nic -- "nicotine is the most  
13 chemically and" physiological -- "physiologically  
14 active form because it is most rapidly absorbed";  
15 correct?

16 A. I mean, that's what it says at the top of the  
17 document. It's -- it doesn't reflect exactly what  
18 the U.S. Surgeon General says in his review in -- in  
19 1988 and where he's saying that very much -- and --  
20 and I haven't read fully from that, but what he says  
21 is that the -- the fundamental absorption occurs  
22 through the lung and -- and that that absorption  
23 is -- is dependent upon the physiological pH, which  
24 is -- which is 7.4, and has -- has fairly little  
25 relevance in terms of the pH of the smoke that's

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1 being inhaled.

2 Q. And move to strike the nonresponsive portion of  
3 the answer.

4 Sir, one of the reasons that free base nicotine  
5 is more physiologically active is because it has a  
6 smaller molecule than the salt form; correct?

7 A. The difference between free base nicotine and  
8 bound nicotine is -- is simply that in bound nicotine  
9 the -- the -- the nicotine will in its ionized form  
10 be bound up with the particles. In free base  
11 nicotine, the nicotine is -- is free of the  
12 particles, which means that it will -- means it will  
13 have different characteristics.

14 In terms of your question, which was -- I'm  
15 sorry, could you repeat the different terms of the  
16 activity.

17 Q. Sir, one of the reasons that free base nicotine  
18 is more physiologically active is because it has a  
19 smaller molecule than the salt form; correct?

20 A. Well certainly it will be a smaller molecule  
21 than if it is attached to a salt of any type,  
22 naturally because it will have less molecules to --  
23 to its form. Whether that is the reason why it might  
24 be, as you described, more physiologically active --  
25 and I assume what you mean by that, it may have more

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1 interaction, for example, with the back of -- of the  
2 throat during inhalation -- I'm not certain.

3 Q. Well, sir, you're aware that the B.A.T. Group  
4 has spent millions of dollars trying to free up  
5 nicotine in their cigarettes; isn't that true?

6 MR. SHEFFLER: Objection to the form.

7 A. I mean, I think that's absolutely not true at  
8 all, and I -- I don't know of research that is  
9 focused upon freeing up the nicotine for any  
10 particular reason. What clearly we have done is a  
11 variety of researches that have looked at nicotine  
12 and a lot of research and primarily again because of  
13 our -- our work with the -- the U.K. government, its  
14 product modification program, where at some times it  
15 was telling us that we should try and produce  
16 cigarettes that were lower in tar but -- but weren't  
17 as reduced as much in nicotine.

18 In terms of -- of the -- of what we have as --  
19 as commercial cigarettes, I think generally what is  
20 thought is that in commercial cigarettes -- and this  
21 is shown here -- the percentage of -- of free base  
22 compared to the percentage of -- of bound is -- is a  
23 very small difference, even through a fairly wide  
24 range of pH values.

25 Q. Sir, isn't it true that one of the targets that

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1 BATCO and the B.A.T. Group companies had was an  
2 objective of making smaller amounts of nicotine work  
3 harder in the body?

4 MR. SHEFFLER: Object to the form.

5 A. I mean, I've heard that quote before. I'm not  
6 quite sure what it means in terms of that quotation.  
7 What has clearly been the case is that  
8 British-American Tobacco has responded to the public  
9 health and worked certainly in the U.K. and elsewhere  
10 with the public health groups in producing products  
11 that would be responsive to what they believed were  
12 to be safer, and those tended to be lower-tar  
13 products with lower nicotine as well.

14 There were certainly suggestions -- and you can  
15 read them in Nicotine, Smoking and The Low Tar  
16 Programme by Nicholas Wald and Sir Peter Froggatt,  
17 which refers to the efforts in the United Kingdom --  
18 that one should try and reduce -- well that one  
19 should affect the tar-to-nicotine ratio.

20 In terms of freeing up nicotine to make it more  
21 active, I don't think that's anything that's possible  
22 to do, and that again I use as my source the -- the  
23 U.S. Surgeon General's report of 1988, who says  
24 effectively it doesn't really matter what the pH of  
25 smoke is because that is governed in terms of

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1 absorption by the physiological pH, which is 7.4.

2 Q. Well, sir, did you ever --

3 Did BATCO ever share with any of these  
4 scientists that you've just been talking about the  
5 secret work that they did on Project SHIP?

6 MR. SHEFFLER: Objection to the form,  
7 objection to the assumptions not established by the  
8 evidence in this record.

9 A. You know, my understanding of Project SHIP was a  
10 fairly long project looking at trying to map various  
11 characteristics of smoke through a whole series of  
12 really quite sophisticated mathematical techniques.  
13 In terms of have we shared information that we have  
14 with the people I've been talking about like Nicholas  
15 Wald, like Sir Peter Froggatt in the United Kingdom,  
16 the answer is clearly yes, and -- and these types of  
17 matters were, for example, discussed at a Smoking  
18 Behavior Conference in terms of -- of -- of the role  
19 of nicotine.

20 Also, our contribution to the efforts of the  
21 U.K. government and the Independent Scientific  
22 Community -- Scientific -- let me just get the term  
23 right; I'm always stumbling over it -- the  
24 Independent Scientific Committee on Smoking and  
25 Health has been to run international academic

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1 symposia looking at these types of issues.

2 Q. Well, sir, your -- your testimony for the ladies  
3 and gentlemen of the jury is that BATCO has shared  
4 the results of its research trying to determine, for  
5 example, the effect of pectin levels on nicotine  
6 manipulation with the scientists you've been talking  
7 about; is that right?

8 MR. SHEFFLER: Objection. That  
9 mischaracterizes the witness's testimony.

10 A. And -- and that wasn't my response at all or my  
11 testimony. What I've said is that we have worked  
12 openly with the -- the British government, with the  
13 Independent Scientific Committee on -- on Smoking and  
14 Health and with The Tobacco Products Research Trust  
15 program in terms of understanding these issues.

16 Project SHIP, as far as I believe, was -- was  
17 looking at things that might be commercially useful.  
18 It was a -- a project that looked at, I believe, a  
19 variety of prototype products, but, I mean, you'd  
20 have to give it to me again to refresh my memory.  
21 Has anything in Project -- is there anything in  
22 Project SHIP or any of our other research in-house  
23 that would affect the views of the public health  
24 authorities? My answer is no.

25 MS. WIVELL: Well I object for lack of



1 foundation and nonresponsiveness to that portion of  
2 the answer.

3 Could we go off the record for a minute.

4 MR. SHEFFLER: Sure.

5 THE REPORTER: Off the record, please.

6 (Recess taken.)

7 (Plaintiffs' Exhibit 613 was marked  
8 for identification.)

9 BY MS. WIVELL:

10 Q. Sir, showing you what's been marked as  
11 Plaintiffs' Exhibit 613, this is a document that  
12 begins with the Bates number 100543649; correct?

13 A. That's correct.

14 Q. And this is a "Project SHIP, Review of" Pro --  
15 Process - "5/6 November 1984," is the title of the  
16 document; right?

17 A. The title is "Project SHIP, Review of Progress,"  
18 then "5/6 November 1984."

19 Q. Now, sir, if we turn to the page that ends with  
20 Bates number 653, there are listed some objectives of  
21 a portion of Project SHIP; correct?

22 A. It says on -- on this page "SHIP III/IV -  
23 Additional Study of Sheet Properties," and the  
24 objective is stated "To gain, through a combination  
25 of combustion, filtration and" chromatography --

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1 "chromatographic research, an understanding of the  
2 relationship of EBR technology to PPJS and RCB ...,"  
3 yeah.

4 Q. And then it says "... in terms of" and then  
5 lists a variety of different things that were being  
6 studied, a) through h); correct?

7 A. Yep, there's a whole series of things, a)  
8 through h), listed here.

9 Q. And c) is "free base/vapour nicotine release";  
10 correct?

11 A. Yeah, c) is that. d) is "nicotine filtration by  
12 tobacco column and acetate filters."

13 Q. e) is "effect" on "pectin levels of nicotine  
14 manipulation"; correct?

15 A. That's correct. f) is "thermal decomposition of  
16 nicotine pectinate." And -- and it goes on, yeah.

17 Q. Now if we turn to page 655, we see a subject  
18 heading "Free Base/Vapour Nicotine Release";  
19 correct?

20 A. It's marked "c) Free Base/Vapour Nicotine  
21 Release," yeah.

22 Q. And it said "Nicotine may be presented to the  
23 smoker in at least three forms"; right?

24 A. It says that.

25 Q. And the first form, "salt form in the

1 particulate phase," that's bound nicotine, isn't it?

2 A. I think that's what it refers to, yes.

3 Q. And the second two forms, "free base form in  
4 the" phase -- "in the particulate phase" and "free  
5 base form in the vapour phase," those are free base  
6 nicotines; right?

7 A. They're -- they're free base, yes.

8 Q. All right. And it goes on to say "It has long  
9 been believed that nicotine presented as ...  
10 (ii)/(iii)," the free base form, "is" considered --  
11 "considerably more," quote, "'active,'" close quote;  
12 correct?

13 A. Yeah, it said -- does say "'active'" in -- in  
14 quotations. I'm not sure what it means by  
15 "'active.'" It may well mean in terms of the  
16 physiological response to the back of the throat in  
17 terms of impact.

18 Q. Now, sir, isn't it true that through studies  
19 that were done by BATCO in conjunction with Brown &  
20 Williamson it was learned that the transfer of  
21 nicotine is dependent upon the extent to which  
22 nicotine is present as free base?

23 A. If you'd like to refer me to -- if this is in  
24 this document, if you can refer me to that, I will  
25 look at that. My understanding is -- is -- of -- of

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1 nicotine transfer is that there may be some things  
2 which can affect that in terms of the transfer, what  
3 is in the tobacco, its -- its starting point in the  
4 cigarette and -- and how much that is transferred  
5 into the mainstream smoke from the tobacco in  
6 itself.

7       And I think, I mean, you're absolutely right  
8 that there clearly have -- and I think Project SHIP  
9 is an example of there's a variety of -- of, I think,  
10 experimental designs that I've -- I've looked at, and  
11 I think in this case we're talking about trying to  
12 reverse engineer a cigarette like Marlboro, which  
13 is -- is the thing that's stated in -- in point c).

14 Q.   Now, sir, isn't it a fact that BATCO has known  
15 since 1964 that transfer of nicotine is dependent  
16 upon the extent to which the nicotine is present as  
17 free base?

18               MR. SHEFFLER:   Objection to the form.

19 A.   I'm not sure whether it's 1964.   I think, I  
20 mean, there's a general scientific understanding in  
21 terms of -- of the transfer efficiency from tobacco  
22 into mainstream smoke, and that would be dependent on  
23 a variety of factors.

24               THE REPORTER:   Off the record, please.

25               (Discussion off the record.)

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1 (Plaintiffs' Exhibit 614 was marked  
2 for identification.)

3 THE WITNESS: Thanks.

4 BY MS. WIVELL:

5 Q. Sure -- excuse me.

6 Sir, showing you what's been marked as  
7 Plaintiffs' Exhibit 614, this is a BATCO study  
8 entitled "THE RELEASE DURING SMOKING OF NICOTINE  
9 ADDED AT VARIOUS," quote, "'SALTS,'" quote, "TO  
10 EXTRACTED TOBACCO CIGARETTES"; correct?

11 A. That's correct. It's a project marked "1964."

12 Q. All right. And the Bates number of this  
13 document is 400722326; right?

14 A. That's correct.

15 Q. If we turn to the first page of the -- I'm  
16 sorry.

17 If we turn to the second page of the study, we  
18 find the summary and conclusions; correct?

19 A. Sorry. Yeah, on the -- the first page of the  
20 report, on -- on 327, it says "SUMMARY &  
21 CONCLUSIONS."

22 Q. And it refers to studies that were done on the  
23 transfer of nicotine into mainstream smoke which were  
24 carried out by BATCO; right?

25 A. It says "Further studies on the transfer of

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1 nicotine into main-stream smoke have been carried out  
2 using cigarettes made from extracted tobacco," which  
3 presumably is experimental cigarettes, "to which  
4 known amounts of nicotine were added as free base or  
5 salts," yes.

6 Q. And the results of those studies showed that the  
7 transfer of nicotine was dis -- dependent on the  
8 extent to which the nicotine was present as free  
9 base; right?

10 A. That's what it says.

11 Q. Now, sir, have you looked at those results?

12 A. I have at some stage. I mean, obviously  
13 there's -- there's a tremendous amount of R&D reports  
14 over the years. If you'd like me to -- to read this  
15 one, I can -- certainly can do to provide you with  
16 comments.

17 Q. Well, sir, isn't it a fact that the B.A.T. Group  
18 companies used the technology -- or I'm sorry, strike  
19 that.

20 Isn't it a fact that the B.A.T. Group companies  
21 used the knowledge concerning the effect of free base  
22 nicotine to tailor smoke deliveries to the nicotine  
23 requirements of particular markets?

24 MR. FRANKEL: Object to form.

25 A. I'm not sure really what you mean by "the

1 nicotine requirements of particular markets." I  
2 mean, my understanding is, is as you look at -- at --  
3 if "markets" refers to various countries in which  
4 cigarettes are sold and consumed, there will be a  
5 variety of -- of -- of differences in terms of what  
6 consumers prefer in those places. For example, in I  
7 think historically a place like China, there is a  
8 tendency to be up around a higher tar prevalence in  
9 terms of what people consume compared to somewhere  
10 like the United States or the United Kingdom.

11 You need to ask me the question again in terms  
12 of whether I have a view on -- on what the precise  
13 question was.

14 (Plaintiffs' Exhibit 615 was marked  
15 for identification.)

16 THE WITNESS: Thanks.

17 BY MS. WIVELL:

18 Q. Sir, showing you what's been marked as  
19 Plaintiffs' Exhibit 615, this is a document entitled  
20 "PROJECT FLEECE - AN EXAMINATION OF R.J. REYNOLDS'  
21 BRANDS"; correct?

22 A. That's correct.

23 Q. And the Bates number on the first page is  
24 105652609; right?

25 A. Correct.

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1 Q. Now if we look at the page that ends with Bates  
2 number 612, do you see there in the second paragraph  
3 the statement that "... B.A.T normally aims to tailor  
4 smoke deliveries to the nicotine requirements of  
5 particular markets"?

6 MR. SHEFFLER: Objection to the form, lack  
7 of foundation.

8 A. If you can tell me which part of that page, then  
9 I can have a look at it.

10 Q. Second paragraph, sir.

11 A. Yeah, it says "Many of these findings" -- and  
12 I'd need to read the findings -- "run counter to  
13 B.A.T international brand practice." And I assume by  
14 that it means British-American Tobacco Company  
15 international brand practice. It does say "For  
16 example," British-American Tobacco, "B.A.T" in this  
17 document, "normally aims to tailor smoke deliveries  
18 to the nicotine requirements of particular markets."  
19 That's what it says.

20 Q. Now, sir, isn't it a fact that the B.A.T. Group  
21 tobacco companies did tailor their nicotine  
22 requirements to the particular market in which their  
23 cigarettes were being sold?

24 MR. SHEFFLER: Object to the form.

25 A. I think the answer is -- is no. If you look at

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1 the international arena and you look at cigarettes  
2 that are sold in -- in various countries, those  
3 cigarettes are very much dependent upon the -- the  
4 taste characteristics that those particular consumers  
5 expect. For example, in some parts of the world  
6 you'll have cigarettes like you do have in the United  
7 States, which have a lot of flavors added to them.  
8 If you go to other parts of the world, you'll have  
9 more of a flue-cured situation where the taste is  
10 quite different. You will also find in some parts of  
11 the world that the preference is for higher-tar  
12 cigarettes, compared to somewhere like the U.K. where  
13 the preference is for -- for lower-tar cigarettes.

14 I don't know of -- of examples in -- in reality  
15 in terms of -- of what we do with commercial  
16 cigarettes that there's any notion of tailoring in  
17 regard to nicotine. And the way that product  
18 development works is what you do is you start with a  
19 consumer, someone who chooses to smoke. You identify  
20 what makes them prefer a particular cigarette, and  
21 what you would wish to do is make a cigarette which  
22 they would prefer compared to the competition.

23 I think the last couple of documents you showed  
24 me really, I mean, illustrate some attempts at -- at  
25 British-American Tobacco to -- to look at competitors

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1 and to see what might be done to -- to our products,  
2 but the fundamentals of product development are you  
3 look at what consumers prefer. That is almost  
4 entirely, as far as I understand, governed by taste,  
5 and -- and the taste is generally governed by tar.

6 Q. Sir, isn't it a fact plain and simple that your  
7 companies that manufacture cigarettes have instituted  
8 ammonia technology in order to control the pH of the  
9 cigarettes so that more free base nicotine can be  
10 delivered to the smoker in the first puff?

11 MR. SHEFFLER: Objection to the form.

12 A. In my view, in terms of our commercial  
13 cigarettes, no, that is absolutely not the case.  
14 Ammonia is naturally present in tobacco, as are  
15 sugars. What -- what is a very well-known reaction  
16 in chemistry is -- is the reaction between ammonia  
17 and sugar, which can result in some compounds which  
18 give additional tastes. It's exactly the same thing  
19 that happens when you roast beef or you roast  
20 coffee.

21 I do understand there was a significant amount  
22 of research looking at ammonia technology for two  
23 real reasons: the one reason being attempts to  
24 improve taste, the second reason to try and reduce --  
25 reduce the irritation that is found in some smokes.

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1 It's a technology that typically has been applied to  
2 the American style of cigarettes as opposed to the --  
3 the flue-cured style of cigarettes. In the majority  
4 of British-American Tobacco's commercial cigarettes,  
5 ammonia or ammonia salts aren't used.

6 Q. Well, sir, isn't it a fact that ammonia  
7 technology was instituted worldwide in the B.A.T.  
8 Group tobacco companies under the heading "Worldwide  
9 Best"?

10 MR. SHEFFLER: Objection, lack of  
11 foundation.

12 A. I mean, the answer again is no. I mean, there  
13 was a project called Worldwide Best, which was again  
14 a commercial pro -- a project which tried to -- to  
15 look at finding ways in which we could produce  
16 cigarettes that would be preferred by consumers. The  
17 majority of British-American Tobacco's products sold,  
18 for example, in -- in many, many countries of the  
19 world that -- that prefer the flue-cured taste, there  
20 is no ammonia used in any shape or form.

21 And so no, there has never been a policy on the  
22 basis of Worldwide Best to suggest that people should  
23 use ammonia technology, and frankly it wouldn't be  
24 sensible in -- in that since it's focused upon taste  
25 and not any other reason, if -- if the taste

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1 characteristics of the reaction between ammonia and  
2 sugar, which results in a sort of toasty, roasty sort  
3 of -- of flavors, are not what consumers prefer, then  
4 obviously you would not use ammonia technology.

5 Q. Sir, isn't it a fact that ammonia technology was  
6 instituted at British-American Tobacco Company's  
7 tobacco group associate companies in order to try and  
8 replicate the nicotine transfer efficiency of  
9 Marlboro cigarettes?

10 A. Again, I respond that the majority of many, many  
11 countries around the world have cigarettes that do  
12 not use ammonia technology. I believe that there  
13 were certainly attempts to reverse engineer in that  
14 people had a view that Marlboro was a cigarette that  
15 many people preferred. What was found out from that  
16 was not in terms of commercial cigarettes any  
17 advantages of ammonia that relates to nicotine  
18 transfer. Ammonia's used in -- in small quantities.  
19 Ammonia's naturally present in tobacco.

20 What you find is in commercial cigarettes really  
21 the application of ammonia and salts related to  
22 ammonia do not affect the pH and do not affect in any  
23 significant way nicotine transfer. Nicotine transfer  
24 of course would be measured -- if you're talking of  
25 nicotine transfer from tobacco through to the

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1 mainstream smoke, would be measured in the smoke --  
2 the smoking machines that you use to -- to -- to  
3 measure deliveries, and those are the deliveries or  
4 yields that are printed on -- on packs in the U.K.  
5 and I gather on advertising in the U.S.

6 MS. WIVELL: We're going to have to go off  
7 the record for a minute because this has already been  
8 marked as an exhibit and I don't have the exhibit  
9 number.

10 THE REPORTER: Off the record, please.

11 (Discussion off the record.)

12 (Plaintiffs' Exhibit 616 was marked  
13 for identification.)

14 BY MS. WIVELL:

15 Q. Sir, showing you what's been marked as  
16 Plaintiffs' Exhibit 616, this is BW-SD3-0000059 as  
17 the first number; right?

18 A. That's the number at the -- the bottom, yeah.

19 Q. And this is a Brown & Williamson Tobacco  
20 Corporation research document entitled "PM'S GLOBAL  
21 STRATEGY: MARLBORO PRODUCT TECHNOLOGY"; right?

22 A. Yes, it is.

23 Q. Just so the ladies and gentlemen can understand,  
24 Brown & Williamson and BATCO spent a lot of time and  
25 effort reverse engineering Marlboro cigarettes;

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1 correct?

2 MR. SHEFFLER: Objection to the form.

3 A. There -- there clearly were projects at  
4 British-American Tobacco -- and I assume I don't have  
5 as much knowledge of -- of what happened at Brown &  
6 Williamson -- to look at what would be a cigarette  
7 that might be preferred, and -- and one of the market  
8 leaders certainly would have been Marlboro. So that  
9 would have been one cigarette, but I noticed from the  
10 last document you gave me they were also looking at  
11 products from R.J. Reynolds and, I guess, other  
12 products too.

13 Q. All right. And you understand that one of the  
14 conclusions that the reverse engineering of Marlboro  
15 came to -- strike that.

16 One of the things that this reverse engineering  
17 of Marlboro was looking at was trying to determine  
18 what was the key or the secret to Marlboro's  
19 character; correct?

20 A. I mean, I think there was a lot of in-house  
21 research on the assumption that there was something  
22 special to the taste of Marlboro that made it  
23 preferred in some markets, and certainly there was a  
24 lot of work to try and identify whether there was a  
25 particular substance which -- which gave rise to a --

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1 a particular taste. Whether that was actually borne  
2 out, that there was a particular taste or individual  
3 substance, I'm not sure, but certainly there were  
4 several hypotheses suggested that some of those  
5 chemicals were -- were related to substances of the  
6 ammonia/sugar reaction, yes.

7 Q. And, sir, this document summarizes the work that  
8 went on for more than a decade concerning the B.A.T.  
9 Group companies' attempts to find out what made  
10 Marlboro so successful; right?

11 MR. FRANKEL: Object to form.

12 A. I mean, I haven't seen this document before.  
13 I'd need to read it to give you a view on that. It's  
14 a long document.

15 Q. Well, sir, could you turn to the page that ends  
16 with Bates number 78.

17 A. Is that the Bates number at the bottom, the  
18 B&W -- the BW thing?

19 Q. Yes, sir.

20 A. Okay.

21 Q. Yep.

22 A. 78.

23 Q. Do you have it, sir?

24 A. 78, got it.

25 Q. And at the top of the page it says "Ammonia

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1 and/or phosphate provide much of what is commonly  
2 referred to as the PM character"; correct?

3 A. That's correct. That's what it says.

4 Q. And it goes on to say "These compounds alter  
5 blend and smoke chemistry in order to," and then it  
6 gives a list of things which ammonia and phosphate do  
7 to alter smoke chemistry; right?

8 A. Yeah, it talks about reduced irritation. Then  
9 it in brackets talks about "(smoke ammonia/carbonyl  
10 reactions)," which is I think what I was talking  
11 about before in terms of the use of ammonia to try  
12 and reduce irritation. It talks about "Enhance  
13 nicotine availability (free nicotine)," and I assume  
14 that refers to some impact on smoke sensory because  
15 that's what it says afterwards.

16 It talks about imparting unique base flavor  
17 notes; i.e., reaction products, and I think what it  
18 means there is reaction products between ammonia and  
19 sugar. And it says en -- "Enhance flavor compounds"  
20 and again "(reaction products)," and I think that's  
21 exactly the same thing, is ammonia/sugar reaction to  
22 talk about taste.

23 It goes on to say "These are essential elements  
24 of ammonia technology and its beneficial impact on  
25 smoke sensory."

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1 Q. And, sir, isn't it a fact that as a result of  
2 the work that was done jointly by Brown & Williamson  
3 and BATCO reverse engineering Marlboro cigarettes  
4 that ammonia technology was adopted as a method by  
5 the B.A.T. Group tobacco companies?

6 MR. SHEFFLER: Objection, asked and  
7 answered.

8 A. Well the answer is no if -- if what you're  
9 saying is did we adopt this worldwide as a particular  
10 practice. What is clear from what I've just read out  
11 is that there was anticipated from -- from this  
12 research that there are ammonia/sugar reactions that  
13 give rise to some, as it says here, smoke sensory  
14 benefit, including reduce -- including reducing  
15 irritation and increasing flavor. It says "Enhance  
16 flavor compounds" and imparting unique base flavor  
17 notes.

18 What it is -- is -- is -- in the products that  
19 are traditionally flue cured, no, there isn't an  
20 application of ammonia technology because I think the  
21 taste and flavor characteristics that this is  
22 referring to are the ones that people who choose to  
23 smoke the American blended type of cigarettes  
24 prefer.

25 (Plaintiffs' Exhibit 617 was marked

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1 for identification.)

2 THE WITNESS: Thanks.

3 BY MS. WIVELL:

4 Q. Sir, showing you what's been marked as  
5 Plaintiffs' Exhibit 617, this is a document Bates  
6 numbered 401155909; correct?

7 A. Yeah.

8 Q. And this is the "EXECUTIVE SUMMARY, AMMONIA  
9 TECHNOLOGY"; right?

10 A. That's what it says on the top. It says "Page  
11 3" also. I'm not sure what the pages were before  
12 this.

13 Q. And it also says handwritten at the top  
14 "Introduction, Ammonia Technology Conference,  
15 Louisville, June" 13 -- "11-13, 1990"; right?

16 A. Yeah, it says that in -- in handwriting.

17 Q. Now, sir, you understand, don't you, that there  
18 were two Ammonia Conferences -- Ammonia Technology  
19 Conferences which were held in Louisville at which  
20 representatives from the various B.A.T. Group tobacco  
21 companies attended; correct?

22 A. I mean, I understand that there were a variety  
23 of meetings from people involved in British-American  
24 Tobacco Company's operating groups involved in  
25 tobacco on a variety of factors. Certainly there was

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1 at least one on ammonia technology. It seems to be  
2 noted here. I'm not sure whether there were two.  
3 There were certainly a variety of meetings really  
4 throughout the years discussing taste  
5 characteristics, et cetera.

6 Q. Now, sir, have you read the minutes or the  
7 present -- strike that.

8 Have you read the minutes of the Ammonia  
9 Technology Conference that were held in Louisville in  
10 1989?

11 A. I may have done. I mean, I've read so much I  
12 can't remember precisely whether I read those  
13 minutes.

14 Q. Have you read the minutes of the Ammonia  
15 Technology Conference that were held in 1990?

16 A. Again I may have done, and -- and again, I mean,  
17 there are so many documents within our research  
18 history over many, many years. I can't remember  
19 precisely whether I've read that.

20 Q. Have you read Exhibit 617?

21 A. This is 617. If you give me a chance to have a  
22 look at it, I'll -- I should be able to remember  
23 whether I've read this or not.

24 Q. Well why don't you just glance through it  
25 brief -- briefly, and then tell me whether you've

1 read it before.

2 (Witness reviews Plaintiffs' Exhibit 617.)

3 A. I've read a variety of documents related to  
4 ammonia technology. I can't remember reading this  
5 one.

6 Q. All right. The second paragraph of this  
7 document begins by stating "Ammonia technologies have  
8 been developed in the group to the stage where U.S.  
9 blended products can be manufactured with comparable  
10 smoking quality to Marlboro"; correct?

11 A. I'm sorry, where were you reading that from?

12 Q. The first sentence of the second paragraph,  
13 sir.

14 A. That's correct.

15 Q. And isn't it a fact that by the time the Ammonia  
16 Technology Conference took place in Louisville in  
17 1990, every single one of the associate companies of  
18 the B.A.T. Group which manufactured cigarettes were  
19 engaged in one form or another of ammonia  
20 technology?

21 MR. SHEFFLER: Objection, lack of  
22 foundation.

23 A. And again, the answer is no. To my knowledge,  
24 in many of the countries around the world where the  
25 taste is -- is -- is that of -- of a flue-cured

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1 taste, there was no application of ammonia technology  
2 at all. It would not have been sensible to do so.

3 What I gather ammonia technology does is -- is  
4 produce interactions, reactions of -- with ammonia,  
5 which occurs naturally, as it says at the top of  
6 here, in tobacco, and sugars and to improve a  
7 particular type of taste which is preferred by those  
8 that smoke the American blended type of cigarettes.

9 Q. Now, sir, it goes on to say "Three key  
10 technologies, CPCL from Brown & Williamson, EMERGE  
11 from BATCF, and ANSIRO from Souza Cruz provide the  
12 building blocks"; correct?

13 A. That's correct.

14 Q. And isn't it a fact that Brown & Williamson used  
15 ammonia technology for its marketed cigarettes in the  
16 United States?

17 A. I mean, I'm not here to speak on behalf of  
18 Brown & Williamson. It would be my understanding --  
19 but, I mean, I can't speak as -- as being expert on  
20 that -- that Brown & Williamson at some stage may  
21 have used ammonia technology.

22 Q. And BATCO used ammonia technology in the form of  
23 the deer process; isn't that true?

24 A. Well, I mean, the deer process is -- is a -- is  
25 a way of processing tobacco, and in some forms of

1 deer ammonia may be used. And again, I mean, deer is  
2 used in specific products again with the type of  
3 American blended flavors that you wish to get.

4 Q. Sir, could you get out Defendants' Answers to  
5 Plaintiffs' Request for Admissions, Exhibit 590.

6 A. If I can find it. Is it -- would it be here?

7 (Plaintiffs' Exhibit 590 was handed  
8 to the witness.)

9 THE WITNESS: Thanks a lot.

10 BY MS. WIVELL:

11 Q. Sir, if you turn to page six of Exhibit 590, do  
12 you see some requests concerning nicotine?

13 A. Request Number 9 says "Admit that it is  
14 technologically feasible to remove nicotine from  
15 tobacco in the cigarette manufacturing process."

16 Q. And what was B.A.T. Industries' response?

17 A. B.A.T. Industries responded by saying to Request  
18 Number 9 "BAT Industries objects to Request Number 9  
19 on the ground that it is vague and ambiguous. BAT  
20 Industries denies Request Number 9, but admits that  
21 it is technologically feasible to remove most  
22 nicotine from tobacco, but not in the normal  
23 cigarette" man -- "manufacturing process."

24 Q. Now, sir, the next request for admission asks  
25 B.A.T. Industries to admit that it is technologically

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1 feasible to reduce the level of nicotine in  
2 cigarettes; right?

3 A. That's re -- correct. That's Request  
4 Number 10. The response to Request Number 10 is that  
5 "BAT Industries objects to Request Number 10 on the  
6 ground that it is vague and ambiguous. Based on  
7 plaintiffs' broad definition of the concept of 'level  
8 of nicotine' set forth in Plaintiffs' Third Set of  
9 Interrogatories to BAT Industries P.L.C., BAT  
10 Industries admits that it is technologically feasible  
11 within certain limits to reduce the level of nicotine  
12 in cigarettes."

13 Q. Now does that mean that you could take the  
14 nicotine out of cigarettes if you wanted to?

15 MR. SHEFFLER: Object to the form.

16 A. Well if you're referring to the -- the Request  
17 Number 9, I mean, I think it's clear that there are  
18 certain technologies which are certainly, as -- as is  
19 stated here, not used in the normal cigarette man --  
20 manufacturing process that could remove nicotine, and  
21 that's evidence that I believe there have been in the  
22 U.S. market products that have been on the -- in the  
23 marketplace that have either had very little or -- or  
24 virtually no nicotine in them.

25 Q. Now, sir, the next request asks B.A.T.

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1 Industries to admit that it is technologically  
2 feasible to alter and/or control the level of  
3 nicotine in cigarettes; right?

4 A. Request Number 11 says "Admit that it is  
5 technologically feasible to alter and/or control the  
6 level of nicotine in cigarettes," yeah.

7 Q. And the response of B.A.T. Industries is what,  
8 sir?

9 A. In responding to that Request Number 11, "BAT  
10 Industries objects to Request Number 11 on the  
11 ground ... it is vague and ambiguous. Based on  
12 plaintiffs' broad definition of the concept of 'level  
13 of nicotine,'" inverted commas or in quotation marks,  
14 "set forth in" the "Plaintiffs' Third Set of  
15 Interrogatories to BAT Industries P.L.C., BAT  
16 Industries admits that it is technologically feasible  
17 within certain limits to alter and/or control the  
18 level of nicotine in cigarettes."

19 And that doesn't frankly surprise me since, as  
20 you'll see in the marketplace, there are a variety  
21 of -- of yields in terms of commercial cigarettes  
22 that are altered both in terms of their tar and their  
23 nicotine.

24 Q. Well, sir, in the cigarettes that had supposedly  
25 low tar and low nicotine, isn't it a fact that

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1 ammonia technology was used to free up the nicotine  
2 so it was in changed form; there would be more free  
3 base nicotine?

4 A. In terms of commercial products, as far as I'm  
5 aware, no, absolutely not. What happens is, is that  
6 ammonia has been used on some products in terms to  
7 improve the taste characteristics. As far as I know  
8 from the research that's been done in-house, it -- as  
9 we refer to commercial cigarettes, the amount of  
10 ammonia that is used is so low that it wouldn't  
11 actually affect the pH at all.

12 Q. So it's your testimony that in the low-tar and  
13 low-nicotine cigarettes that are manufactured by the  
14 B.A.T. Group companies, there is no effort to  
15 increase the free base nicotine so that the smoker  
16 will have more impact in the low-tar/low-nicotine  
17 cigarettes they're smoking; is that right?

18 A. What I've said was, as far as I'm aware, in the  
19 commercial products that we sell the amount of  
20 ammonia that we use is -- is -- is such a level that  
21 it wouldn't change the pH of smoke, and therefore it  
22 wouldn't then have any significant effect on -- on  
23 the ratio of free base to bound nicotine.

24 Q. Sir, isn't it a fact that the only reason that  
25 nicotine is even in cigarettes is to keep people

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1 hooked so they'll just keep buying them?

2 MR. SHEFFLER: Objection. Objection, asked  
3 and answered. Objection to form.

4 A. No. The reason I assume that nicotine in  
5 cigarettes -- is in cigarettes is because we use  
6 tobacco and nicotine's a natural part of the tobacco  
7 plant. There's absolutely -- it seems to be common  
8 sense to me that if you use a tobacco plant, unless  
9 you do something to extract a particular component of  
10 it, it's going to contain nicotine. Nicotine is a  
11 natural part of tobacco.

12 Q. Sir, isn't it a fact that nicotine is in  
13 cigarettes in order to keep smokers hooked?

14 MR. SHEFFLER: Is that it?

15 A. I mean, again --

16 MR. SHEFFLER: Asked and -- objection,  
17 asked and answered.

18 A. I mean, again nicotine is present in -- in  
19 cigarettes that use tobacco because nicotine is a  
20 natural component of tobacco.

21 Q. But it could be taken out of cigarettes,  
22 couldn't it?

23 MR. SHEFFLER: Objection.

24 A. As we said, there are processes whereby you  
25 could either remove through some sort of extraction

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1 process nicotine, there are ways which you could  
2 reduce the amount of nicotine that's delivered  
3 through -- and as is done through a variety of  
4 ventilation and filtration techniques in cigarettes,  
5 yes.

6 Q. Sir, isn't it a fact that the B.A.T. Group uses  
7 ammonia technology to increase the free base nicotine  
8 in order to hook new smokers?

9 MR. SHEFFLER: Objection.

10 A. It is absolutely not the case that  
11 British-American Tobacco does anything like that.  
12 There is absolutely no intention on British-American  
13 Tobacco's point of view to, as you say, hook  
14 smokers. I mean, the basic facts is, as far as I'm  
15 concerned, if you define addiction in -- in the ways  
16 of -- of -- of whether people can freely give up  
17 smoking, the answer is they clearly can, and  
18 therefore the preface of the -- the premise of your  
19 question in terms of a suggestion that we may wish to  
20 hook -- hook smokers is clearly not correct.

21 Q. Sir, does the B.A.T. Group advertise cigarettes  
22 in order to attract new smokers?

23 A. British-American Tobacco advertising principles  
24 are a very -- a very strong foundation of the group's  
25 practices, and it is most -- most clear in terms of

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1 our actions that British-American Tobacco does not  
2 wish people who are under -- under the legal age to  
3 smoke. And therefore, no, it is clearly not the case  
4 that we would wish to attract either young people to  
5 smoke or new smokers. We will produce cigarettes for  
6 people who have made their own decision that they  
7 wish to smoke. Once they have made that decision,  
8 what we would wish to do is to show them that we have  
9 a product that may be their preferred choice, and  
10 that's certainly one of the reasons that we would use  
11 advertising.

12 But there's absolutely no intention on behalf of  
13 British-American Tobacco to try and persuade someone  
14 who has chosen not to smoke to smoke, and that  
15 applies both to adults and to people who are  
16 younger.

17 Q. Now you said that it was not the purpose of  
18 British-American Tobacco to -- I'm sorry, strike  
19 that.

20 You said it was not -- that British-American  
21 Tobacco does not wish people who are under the legal  
22 age to smoke. Why is that?

23 A. The reason that we -- we take that view is we  
24 believe that smoking should be an adult choice.  
25 There is clear from what we've spoken about many

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1 times during this -- this last couple of days in  
2 terms of the public health opinions' view on smoking  
3 and health that the public -- sorry, the public  
4 health authorities have declared that, in their view,  
5 smoking causes various diseases. It is clear that it  
6 should be a matter of informed choice that people  
7 decide whether they wish to -- to smoke or not.

8 That is a firm policy within British-American  
9 Tobacco. That is our belief, that that should be an  
10 informed choice made by adults. Once people have  
11 made that informed choice, we will do our very best  
12 to produce cigarettes which will meet their -- their  
13 preferences.

14 Q. Why does it take an adult to make this informed  
15 choice, sir?

16 A. I think, I mean, as in -- in all matters; for  
17 example, the consumption of alcohol and/or -- or many  
18 other things, it is not in terms -- in terms -- until  
19 you're at a particular age that you're able to  
20 assimilate all the information that's available to  
21 you and make -- make a proper choice. I mean, I  
22 think that is the reason why you will have  
23 restrictions on what age you should be allowed into a  
24 bar. I think that's the reason why you have  
25 restrictions on what age you may see some particular

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1 movies. I think that is the reason why you have to  
2 reach a particular age until you can obtain a driving  
3 license.

4 Q. Is it also because your product when used as  
5 intended kills people?

6 A. Let me restate again what my views are on this.  
7 The public health authorities have -- have made clear  
8 their views that smoking is a cause of lung cancer  
9 and various other diseases. They have done that for  
10 decades and decades.

11 It is my view that in terms of smoking, it  
12 should be an adult informed choice, and if an adult  
13 decides they wish to smoke on the basis of the  
14 information that they have seen, then that is up to  
15 them. We do nothing in terms of our practices to try  
16 and persuade people in any fashion on that. What  
17 their -- what they will make their decision upon is  
18 on a variety of social factors and certainly in terms  
19 of the views that are presented to them as they go  
20 through schooling and as they go through listening  
21 generally to the media in terms of what the public  
22 health authorities say.

23 Q. Well, sir, would you agree that it is important  
24 that a cigarette company do everything possible to  
25 prevent youths from smoking?

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1                   MR. SHEFFLER: Can I have a continuing  
2 objection to these questions which are outside the  
3 scope of this deposition?

4     A.    I mean, my view is that everything we do as a  
5 company is focused upon the fact that smoking should  
6 be an adult informed choice. I think that tobacco  
7 companies should work together with governments, as  
8 we have done in many, many cases, to try and reduce  
9 what is -- is clearly a fact of life these days,  
10 is -- is people under the legal age actually  
11 smoking.

12           I think you'll find that the reasons that people  
13 identify that people choose to smoke when they're  
14 underage are a variety of ones, including in  
15 particular social and peer pressure. I think  
16 British-American Tobacco does and should continue to  
17 work with governments to do anything it can do in  
18 terms of resolving this problem.

19     Q.    Does B.A.T. Industries do everything it possibly  
20 can to prevent youths from smoking?

21           MR. SHEFFLER: Same objection.

22           MR. FRANKEL: Object to form.

23     A.    B.A.T. Industries will be informed of the  
24 actions of British-American Tobacco Company Limited,  
25 and I think they will be satisfied that the actions

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1 we take in this regard are responsible. We take  
2 every opportunity we can to work with governments  
3 and -- and other people involved with cigarettes to  
4 try and reduce youth smoking.

5 THE REPORTER: Off the record, please.

6 (Discussion off the record.)

7 (Plaintiffs' Exhibit 618 was marked  
8 for identification.)

9 BY MS. WIVELL:

10 Q. Sir, showing you what's been marked as  
11 Plaintiffs' Exhibit 618, this is an ad for Viceroy  
12 cigarettes; correct?

13 MR. SHEFFLER: I -- let me just make an  
14 objection for the record. I -- this is not only  
15 beyond the scope of this deposition, but it also  
16 is -- is a B&W advertisement, and there's been no  
17 foundation laid.

18 A. I mean, this piece of paper I've been given is a  
19 pretty poor photocopy of -- of something which is  
20 dated 1962 and it mentions Viceroy's, so if you're  
21 telling me this was an advertisement, I -- I would  
22 accept that's likely the case.

23 Q. For the record, the Bates number is 660028916;  
24 right?

25 A. Yeah, that's correct.

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1 Q. All right. Sir, is it your testimony that the  
2 people depicted in this ad -- I'm sorry, strike  
3 that.

4 Is it your testimony that this ad was directed  
5 towards adult smokers?

6 MR. SHEFFLER: Objection, same objections  
7 as prior stated.

8 A. I mean, it says "Smoke all seven filter brands  
9 and you'll agree some taste too strong ... some"  
10 taste "too light ... but Viceroy's got the taste  
11 that's right!" It depicts, I mean, a group of people  
12 whose age I -- I can't really tell, and they have  
13 shirts on which has a "V" on it. I'm not sure what  
14 that means.

15 And so I'm not sure I can answer your question  
16 in terms of my perceptions in 1997 of -- of -- of  
17 what this all means. I do know certainly in 1962  
18 that it was very common knowledge in the U.S. -- and  
19 I assume this refers to the United States -- that of  
20 the public health -- certainly the views that smoking  
21 is a -- is a cause of lung cancer coming from a  
22 variety of people. So I would assume and I think --  
23 I mean, I could take some time, but I believe there  
24 are references in the United States Surgeon General's  
25 report to the -- the public acceptance of the

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1 possibility, I think even before 1962, that smoking  
2 may cause cancer, and I would assume that would be a  
3 major influence on -- on the consumers even at that  
4 time.

5 As to your question is this related to young  
6 people, it's really hard to tell from what I see  
7 here.

8 Q. Sir, do you know -- do you have cheerleaders in  
9 the United Kingdom?

10 A. No.

11 Q. Do you know what cheerleaders are?

12 A. I mean, I've watched them on television. I've  
13 watched some American football games, and -- and some  
14 of the people there seem to be cheerleaders. I don't  
15 know what age they are. If -- if I'm watching a  
16 Washington Redskins game or not, they tend to be, I  
17 mean, people jumping up and down with pom-poms as far  
18 as I remember.

19 In terms of this, I don't know whether these are  
20 supposed to -- I thought cheerleaders were women. I  
21 don't know whether men are cheerleaders, and I'm not  
22 sure what this -- this is supposed to depict at all.

23 Q. All right. So -- strike that.

24 MS. WIVELL: We're going to have to go on  
25 the -- on the Cat I record, so we're going to have to

1 go off now.

2 THE REPORTER: Off the record, please.

3 (Category I deposition continued and will  
4 be bound under separate cover labeled  
5 "Volume II-A.")

6 (Plaintiffs' Exhibit 619 was marked  
7 for identification.)

8 (Discussion off the stenographic record.)

9 BY MS. WIVELL:

10 Q. Sir, showing you what's been marked as  
11 Plaintiffs' Exhibit 619, this is a document Bates  
12 numbered 105408812; correct?

13 A. That's correct.

14 Q. And it's entitled --

15 MR. SHEFFLER: Just for the record,  
16 let's -- this deposition is now an A deposition.  
17 Sorry.

18 Q. And it's entitled "Smoking by Children and  
19 Adolescents"; correct?

20 A. Yeah, the title here reads "Smoking by Children  
21 and Adolescents, Memorandum on Further Research to  
22 the Tobacco Manufacturers' Standing Committee,  
23 Suggested by Market Investigations Ltd.," and it's  
24 dated August 1962.

25 Q. And if you turn to the second page of the

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1 document that ends with the Bates number 813, do you  
2 see the second-to-the-last paragraph that begins with  
3 "Children in their teens present a dilemma for the  
4 tobacco manufacturers"?

5 A. Yeah, I see that as presumably what a view of  
6 a -- a marketing research company, whatever Market  
7 Investigations, Limited, were presenting at some  
8 stage to the tobacco companies.

9 Q. So Market Investigations, Limited, is a company  
10 that was hired by BATCO?

11 MR. SHEFFLER: Objection, lack of  
12 foundation.

13 A. No, it doesn't look like it from this  
14 memorandum. What it looks like is a -- is a market  
15 research company that is trying to sell some ideas to  
16 the Tobacco Manufacturers' Standing Committee, which  
17 was a committee which involved a group of U.K.  
18 tobacco manufacturers.

19 Q. Including BATCO; right?

20 A. Yes, including BATCO.

21 Q. Now this document goes on to say "On the one  
22 hand you want to discourage children from smoking, a  
23 point you made quite clearly in your appendix to the  
24 report on Smoking and Health." Have I read that  
25 correctly so far?

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1 A. That's absolutely correct in terms of the views  
2 that were expressed by this Marketing Investigations,  
3 Limited.

4 Q. And then the document goes on to say "You also  
5 presumably, in view of your long term interests, wish  
6 to encourage moderation among adolescents"; right?

7 A. I mean, that again is a view that was presented  
8 by Marketing Investigations, Limited. It's not  
9 something that you'll see if you look through the  
10 actions of British-American Tobacco throughout our  
11 history that has ever been taken up by  
12 British-American Tobacco.

13 Q. It says -- goes on to say "On the other hand it  
14 is difficult for you to lend your weight to a  
15 campaign against smoking by young people without  
16 running the risk of discouraging them from taking up  
17 smoking altogether"; correct?

18 A. And again that is the -- correctly read from  
19 something which is suggested by Market  
20 Investigations, Limited. It presumably is a  
21 suggestion to the Tobacco Manufacturers' Standing  
22 Committee, but again in terms of the actions of  
23 British-American Tobacco, it just doesn't bear any  
24 weight because it -- you -- there is -- there are no  
25 actions in which we would take that into

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1 consideration.

2       What I've said before and I've said many times  
3 during this deposition, it is British-American  
4 Tobacco's fundamental view that smoking is and should  
5 be an adult informed choice and that people under the  
6 age should not smoke.

7 Q.   Sir, isn't it a fact that BATCO knew exactly  
8 what motivates young people to smoke?

9 A.   My answer is -- is probably no. If you're  
10 saying what exactly motivates people to smoke, I  
11 think that's still a matter of very significant  
12 debate today. There's a variety of opinions  
13 expressed in the public health arena as to what the  
14 factors may be, and for example, the U.K. government  
15 ran a conference just a few weeks ago going  
16 specifically to that issue, trying to identify why --  
17 why young people should -- should -- may smoke. I  
18 mean, one of the factors that had been suggested is  
19 that it relates to peer pressure and -- and what the  
20 factors are in -- in home. I mean, another factor  
21 clearly is -- is youth education in schools. I think  
22 that is something that the public health authorities  
23 continue to do quite significantly certainly in the  
24 United Kingdom in terms of providing information to  
25 young people during their school education.

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1 Q. Well, sir, you left out one of the factors that  
2 BATCO knows causes people to start smoking or causes  
3 youths to start smoking; isn't that true?

4 A. No, but I think what you're referring to in your  
5 question is cigarette advertising. If you look at  
6 the evidence from around the world on -- on cigarette  
7 advertising and whether cigarette advertising  
8 encourages people to start smoking, I think generally  
9 what you'll find is that the scientific data and the  
10 review, for example, of countries where tobacco  
11 advertising has been banned for many years compared  
12 to countries where tobacco advertising is permitted,  
13 there is no correlation between cigarette advertising  
14 and people choosing to smoke.

15 And that's -- that is -- is not only  
16 fundamentally based on -- on what does the study  
17 say. It is common sense. I don't see any reason,  
18 for example, in the United Kingdom where alcohol  
19 companies sponsor our soccer matches, U.K. football,  
20 and in the U.K. where my son, who is a football  
21 supporter, buys a football shirt with an alcohol  
22 advertisement on it, that because he sees that  
23 advertisement, he wishes to drink alcohol. He  
24 doesn't. I tell him that he shouldn't, and he does  
25 not drink alcohol. I don't see anything different in

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1 terms of cigarette advertising.

2 Q. Well, sir, you've also left out of your reasons  
3 why youths start to smoke their attempt to obtain  
4 adult status, haven't you?

5 A. Well what I mentioned was -- was peer pressure  
6 and family pressure. Maybe those are things which --  
7 which counter at each other. I mean, I think there's  
8 a general view there's a variety of factors that --  
9 that impose things in terms of peer pressure, and  
10 some of those certainly historically may have been  
11 for many things, including for example drinking, the  
12 notion that you'll achieve adult status. But I think  
13 these days and particularly in the place where the  
14 United -- in the United Kingdom where, for example,  
15 my son, who just completed standardized tests at age  
16 11 as part of his examination on biology, was asked  
17 questions in relation does smoking cause disease, and  
18 he answered yes as part of the education program.

19 I don't -- I'm not really certain that in --  
20 in -- in today's situation that somebody who chooses  
21 to smoke is seeking to be an adult. And I think in  
22 terms of, I mean, the social generation, I think that  
23 is a phenomenon that's probably, I mean, disappeared  
24 a little.

25 Q. Sir, isn't it a fact that B.A.T. generated

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1 marketing practices -- strike that.

2       We've talked about the development of ammonia  
3 technology as a result of reverse engineering of --  
4 of Marlboro cigarettes; right?

5 A.   Yeah, we've -- we've talked about the  
6 development of ammonia technologies to look at the  
7 reactions between ammonia and sugars to try and  
8 impart some taste in terms of certain types of  
9 cigarettes sold by the British-American Tobacco  
10 operating companies, and we've talked about the use  
11 of ammonia in terms of trying to reduce the  
12 irritation of some of those smokes, yes.

13 Q.   All right. Well, sir, isn't it a fact that  
14 B.A.T. also looked at the general marketing practices  
15 under which Marlboro was marketed?

16               MR. FRANKEL: Object to form.

17               MR. SHEFFLER: Object to lack of  
18 foundation.

19 A.   I mean, I haven't prepared in terms of looking  
20 at exactly what we have done in terms of looking at  
21 Marlboro advertising. It wouldn't surprise me in the  
22 lightest -- in the slightest that we have at some  
23 stage within our marketing department looked at the  
24 way that Philip Morris market Marlboro as the way we  
25 would probably look at any other company would --

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1 would -- a cigarette company may be marketing any of  
2 its other products.

3 Q. And isn't it a fact that it was determined that  
4 in response to the Marlboro advertising B.A.T. would  
5 develop an overall strategy that within each market  
6 it would make an effort behind one brand specifically  
7 aimed at starters and young adults?

8 MR. SHEFFLER: I object to this. We were  
9 put on notice through discussions with counsel that  
10 the subject of both youth smoking and advertising was  
11 not going to be the subject of this deposition. I've  
12 let counsel explore it. I've let counsel -- I've  
13 given counsel great latitude in light of the  
14 agreements that were reached regarding the subject  
15 matter of the deposition.

16 This witness has not been instructed nor has he  
17 gone back and tried to review documents that may be  
18 in the marketing files with respect to these various  
19 issues, and if the counsel is now going to examine  
20 him about specific documents, I think it's unfair,  
21 especially since she's obviously reading from  
22 something and not giving him any opportunity to look  
23 at it and especially given the conversations about  
24 the scope of this deposition.

25 MS. WIVELL: Well you're wrong about your

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1 allegations. It is clear within the notice of the  
2 deposition, and there has been no modification.

3 MR. SHEFFLER: Well I objected to the  
4 notice of the deposition because it didn't reflect  
5 the agreements of counsel that was reflected in the  
6 correspondence.

7 BY MS. WIVELL:

8 Q. Sir, do you have my question in mind?

9 A. No, if you could ask it again, please.

10 Q. Isn't it a fact that it was determined that in  
11 response to Marlboro advertising B.A.T. would develop  
12 an overall strategy that within each market it would  
13 make an effort behind one brand specifically aimed at  
14 starters and young adults?

15 MR. FRANKEL: Object to form.

16 MR. SHEFFLER: I object, object to lack of  
17 foundation and all my previous objections.

18 MS. WIVELL: Let me rephrase the question  
19 to try and meet counsel's objection.

20 Q. Isn't it a fact that it was determined that in  
21 response to Marlboro advertising B.A.T. would develop  
22 an overall strategy that within each market it would  
23 make an effort behind one brand specifically aimed at  
24 starters?

25 MR. FRANKEL: Same objections.

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1 MR. SHEFFLER: Yeah, same objection.

2 A. I don't know what document you're referring to.

3 It is my understanding of -- British-American Tobacco  
4 Company's practice is that smoking is an adult  
5 informed choice. Once people become adults and they  
6 make their own individual decision to smoke, then we  
7 would wish, because we're in a competitive business,  
8 that they would choose, having made that decision,  
9 our brands. And I don't think there is any -- as far  
10 as I've ever seen in terms of practice of  
11 British-American Tobacco, any notion that we wish to  
12 try and get someone who has chosen not to smoke to  
13 smoke. Once an adult has made their decision and --  
14 that they wish to smoke, we would certainly like them  
15 to -- to smoke our brands of cigarettes as compared  
16 to the competition's brands of cigarettes.

17 (Plaintiffs' Exhibit 620 was marked  
18 for identification.)

19 THE WITNESS: Thanks.

20 BY MS. WIVELL:

21 Q. Sir, showing you what's been marked as  
22 Plaintiffs' Exhibit 620, this is a document that  
23 bears the Bates number 109870521; correct?

24 A. That's correct.

25 Q. And the title is "THE CURRENT GROUP R&D"

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1 PRACTICE -- "PROJECTS"; right?

2 A. It says "THE CURRENT GROUP R&D PROJECTS," yes.

3 Q. Would you please turn to the page that ends with

4 Bates number 536.

5 A. I see that.

6 Q. And it's entitled "BAT: GENERAL MARKETING

7 POLICIES"; right?

8 A. It says "BAT: GENERAL MARKETING POLICIES," and

9 I assume it refers to the British-American Tobacco

10 group of companies.

11 Q. And then it talks about "ANTI-MARLBORO"; right?

12 A. The first title is "ANTI-MARLBORO."

13 Q. It identifies Marlboro as the single biggest

14 threat to B.A.T.'s number-one position; right?

15 A. It says "MARLBORO IS THE SINGLE BIGGEST THREAT

16 TO BAT'S NUMBER 1 POSITION. NO ONE BRAND CAN DESTROY

17 MARLBORO," it says.

18 Q. Then it goes on to say "OVERALL BAT STRATEGY

19 WILL BE MARKET SPECIFIC AND MULTI-BRAND BUT WITHIN

20 EACH MARKET MAJOR EFFORT BEHIND ONE BRAND AIMED AT

21 STARTERS/YOUNG ADULTS"; right?

22 A. It says that. It -- it refers to B.A.T., which

23 is British-American Tobacco. It says that as part of

24 this document, which, I mean, I'm not sure who the

25 author is, where it's -- it's from or where it is

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1 going to. It starts off as a -- as an R&D, talking  
2 about R&D projects, and I wouldn't have thought in --  
3 in any shape or form that R&D is involved in general  
4 marketing policies and I'm -- I have not -- I mean, I  
5 don't even know the date, but I can probably find  
6 that if I look close enough.

7 I have no view as to the -- whether this is --  
8 truly reflects any one point in time that there was a  
9 general marketing policy by British-American  
10 Tobacco.

11 Q. You have not spoken to anyone about this  
12 document, have you, sir?

13 MR. SHEFFLER: Objection. He just  
14 testified he didn't see it.

15 A. The answer is no, I have not spoken to anyone  
16 about this document.

17 Q. Sir, would you agree that it would be  
18 inappropriate to sell tobacco by illegally trying to  
19 attract young smokers?

20 A. My response is that it would be inappropriate  
21 for us to do anything illegal, and let me restate  
22 again that it is British-American Tobacco's view that  
23 smoking should be an informed adult choice and that  
24 people who are adults should make the choice as to  
25 whether they wish to smoke or not. Once they made

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1 that choice, then we would wish them to choose our  
2 brands if they're going to smoke as compared to the  
3 competition.

4 Q. And, sir, if people chose -- I'm sorry, strike  
5 that.

6 If young smokers, youths, underage smokers,  
7 chose to smoke any of the B.A.T. Group companies'  
8 cigarettes because of actions taken by that company  
9 that manufactured those cigarettes, that would be  
10 improper, sir, wouldn't it?

11 MR. SHEFFLER: Objection to the form of the  
12 question, calls for -- objection as a hypothetical  
13 without basis of fact.

14 A. And again, I mean, it is a hypothetical  
15 question. I can restate, if you like, the position  
16 of British-American Tobacco is that -- that smoking  
17 should be an adult informed choice; that wherever  
18 there are laws, we would hope that laws would at  
19 least be age 18 in terms of -- of -- of the -- of the  
20 legal age where people could start smoking, and in  
21 some countries clearly it is higher than age 18;  
22 the -- that we would wish people not to smoke until  
23 they get to that age.

24 Whether we can be the predominant factor in  
25 enforcing that, the answer is clearly not. It's --

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1 it's a general social issue. It's one that  
2 governments concern themselves with. We work with  
3 governments. It's one that, I mean, a whole series  
4 of people concern themselves with in terms of public  
5 education to children, in terms of the general  
6 society, in terms of the actions of people who are  
7 retailers of cigarette products, and -- and certainly  
8 there are plenty of examples where British-American  
9 Tobacco has worked actively to try and reduce this  
10 problem with governments and with, for example,  
11 retailers.

12 MS. WIVELL: I have nothing further.

13 THE REPORTER: Off the record, please.

14 (Recess taken.)

15 MR. SHEFFLER: BATCO and BATUKE will  
16 reserve its questions until trial. We want the  
17 witness to read and sign.

18 THE REPORTER: Off the record, please.

19 MR. SHEFFLER: Oh, wait, there's another  
20 defendant.

21 MR. FRANKEL: For B.A.T. Industries, even  
22 if we choose to do a redirect, it's obvious that we  
23 can't do it now, so we'll reserve the right to do a  
24 redirect, and if we choose to do so, we'll notify you  
25 shortly and we can talk about scheduling.

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1 MS. WIVELL: Well, I think that we should  
2 go forward and do it if you're going to do it, so I  
3 would like you to do it if you're going to do it.

4 MR. ROSTON: It's 5:30.

5 MR. FRANKEL: It's after 5:30.

6 MS. WIVELL: Oh. Will you let us know  
7 within ten days if you intend to do a --

8 MR. FRANKEL: We will.

9 MS. WIVELL: Thank you.

10 THE REPORTER: Off the record, please.

11 (Deposition recessed at 5:36 o'clock  
12 p.m.)

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1 C E R T I F I C A T E

2 I, William C. LaBorde, hereby certify that  
3 I am qualified as a verbatim shorthand reporter; that  
4 I took in stenographic shorthand the testimony of  
5 CHRISTOPHER J. PROCTOR at the time and place  
6 aforesaid; and that the foregoing transcript  
7 consisting of pages 310 through 550, Volume II, is a  
8 true and correct, full and complete transcription of  
9 said shorthand notes, to the best of my ability.

10 Dated at Las Vegas, Nevada, this 19th day  
11 of August 1997.

12

13

14

15 WILLIAM C. LaBORDE

16 Registered Professional Reporter

17 Notary Public

18

19

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## 1 C E R T I F I C A T E

2 I, CHRISTOPHER J. PROCTOR, the deponent,  
3 hereby certify that I have read the foregoing  
4 transcript consisting of pages 310 through 550,  
5 Volume II, and that said transcript is a true and  
6 correct, full and complete transcription of my  
7 deposition, except per the attached corrections, if  
8 any.

9  
10 (Please check one.)

11  
12 \_\_\_\_ Yes, changes were made per the attached  
13 (no.) \_\_\_\_ pages.

14  
15 \_\_\_\_ No changes were made.

16  
17  
18 CHRISTOPHER J. PROCTOR  
19 Deponent

20  
21 Sworn and subscribed to before me this day  
22 of 199\_\_.

23  
24 Notary Public

25 My commission expires: (WCL)

STIREWALT & ASSOCIATES  
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953